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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

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No. ~~13~~ ORIGINAL.

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF NEW YORK, MABEL HOWLAND GREEN, AND HETTY SYLVIA ANN HOWLAND GREEN WILKS,

Respondents.

ANSWER OF THE RESPONDENT HETTY SYLVIA ANN HOWLAND GREEN WILKS.

HARRISON TWEED,
TIMOTHY N. PFEIFFER,
Attorneys for the Respondent Hetty Sylvia A. H. Green Wilks.

IN THE

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No. 13 ORIGINAL

THE STATE OF TEXAS,

Complainant,

against

THE STATE OF FLORIDA, *ET AL.*,

Respondents.

ANSWER OF THE RESPONDENT HETTY SYLVIA ANN HOWLAND GREEN WILKS.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

COMES now the respondent Hetty Sylvia Ann Howland Green Wilks, a citizen of the United States of America and resident in the State of New York, and answers the Bill of Complaint of the State of Texas in the above entitled cause as follows:

1. Answering Paragraphs 1, 2, 4, 8, 9, 18, 19, 20, 23, 26, 27, 28, 29, 30, 31, 34 and 35, this respondent admits all and singular the averments contained therein.

2. Answering Paragraphs 13, 24, 32 and 33, this respondent denies all and singular the averments contained therein.

3. Answering Paragraphs 3, 5, 6 and 7, this respondent admits all and singular the averments contained therein except she denies that any of the taxes therein referred to are a lien on, or constitute a condition to the succession to, any property which is not situated in the State imposing the tax.

4. Answering Paragraph 10, this respondent admits all and singular the averments contained therein except that she denies that at the time of the death of the said Edward H. R. Green on or about June 8, 1936, or at any time during the month of June, 1936, the said Edward H. R. Green was domiciled at any place whatsoever within the State of Texas.

5. Answering Paragraph 11, this respondent admits all and singular the averments therein to be true and accurate statements of the amount, value, location and extent of the property of the decedent Edward H. R. Green, in so far as the amount, value, location and extent of the said property are known to her.

6. Answering Paragraph 12, this respondent admits that the Federal Estate Tax Return has not yet been filed and that, assuming the correctness of the figures contained in Schedule "A", the calculation of the amount of the Federal estate tax contained therein is correct, and this respondent denies all and singular the other averments contained therein.

7. Answering Paragraphs 14, 15 and 16, this respondent admits that, assuming the correctness of the figures contained in Schedule "A", the calculation of the amount of the respective taxes in good faith claimed by each the State of Florida, the Commonwealth of Massachusetts and

the State of New York is correct, and this respondent denies all and singular the other averments contained therein.

8. Answering Paragraph 17, this respondent admits all and singular the averments contained therein except she denies that the State of Texas is entitled to assess or impose, levy or collect any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green, except the real estate situated in Texas.

9. Answering Paragraph 21, this respondent admits the averment that the said Edward H. R. Green was born abroad, a citizen of the United States of America, of American parents who were domiciled and resided in Bellows Falls, Vermont, and this respondent denies, upon information and belief, all and singular the other averments contained therein.

10. Answering Paragraph 22, this respondent denies the averment that the said Edward H. R. Green was domiciled at his death in the State of Texas and denies any knowledge or information sufficient to form a belief as to all and singular the other averments contained therein.

11. Answering Paragraph 25, this respondent admits all and singular the averments contained therein except she denies that the State of Texas is in any wise entitled to any transfer, succession, inheritance or estate tax upon any part of the estate of the said Edward H. R. Green except the real estate situated in Texas, and further denies that the State of Texas has any lien upon any part of the estate of the said Edward H. R. Green, except the real estate situated in Texas.

12. This respondent has now answered the Bill of Complaint of the State of Texas and now stands ready and willing to offer her proof as to the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property at death and hereby proffers the same, and further offers to do all such equity as this Honorable Court shall require.

WHEREFORE, this respondent prays that this Honorable Court now take proof as to the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property at death and thereupon determine and adjudge that the State of Texas was not the domicile of the said Edward H. R. Green at the time of his death for that purpose, and further determine and adjudge which, if any, the State of Florida, the Commonwealth of Massachusetts, or the State of New York was the domicile of the said Edward H. R. Green for the purpose of the taxation of the transfer of his intangible personal property, and for such other and further relief as to this Honorable Court may seem just and proper.

HARRISON TWEED,
TIMOTHY N. PFEIFFER,
Attorneys for the Respondent Hetty Sylvia Ann Howland Green Wilks.

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Vol. I

Supreme Court of the United States

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

vs.

STATE OF FLORIDA ET AL., DEFENDANTS

REPORT OF THE SPECIAL MASTER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

vs.

STATE OF FLORIDA ET AL., DEFENDANTS

REPORT OF THE SPECIAL MASTER

ERRATA

1. Page 21—11th line from the bottom—change "$200,000 to $1,200,000" to read "$1,450,000 to $2,200,000".

2. Page 29—3rd line from the bottom—change "1918" to read "1910".

3. Page 38—3rd line in second full paragraph—change "1918" to read "1919".

4. Page 42—10th line from the bottom—change "1915" to read "1919".

5. Page 55—12th line—change "several months" to read "about six months".

Voting, taxation and social interests there 26
Uniformity of declarations regarding legal residence 27

Life and activities in New York, 1911-1921 28
Places of abode in New York City 31
Voting and taxation there 34

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1938.

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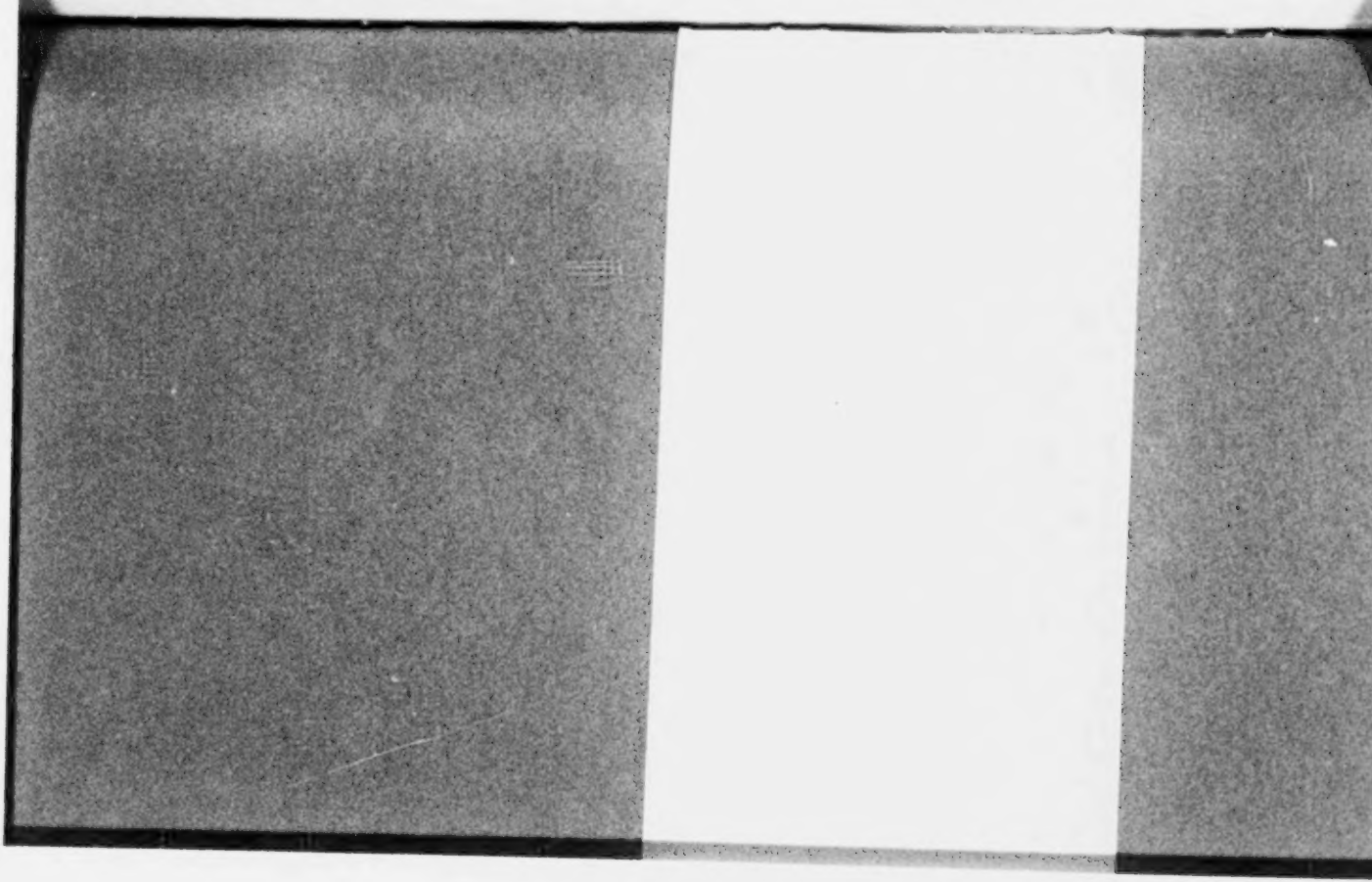

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, COMPLAINANT,

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REPORT OF THE SPECIAL MASTER

INDEX.

	Page
The pleadings	1
The issue	5
Order appointing special master	5
Record, etc.	6
Digest, Appendix A	7
Statutes	8
Question for decision	8
Multiple taxation	9
Jurisdictional facts	10
Legal definition of domicile	15
Findings of fact	19
Ancestry and education	19
Personal characteristics	19
Acquisition and accumulation of wealth	21
Domiciliary periods of his life	22
Life in Texas, 1892-1911	23
Domestic establishments in Texas	24
Associations and activities in Texas	25
Voting, taxation and social interests there	26
Uniformity of declarations regarding legal residence	27
Life and activities in New York, 1911-1921	28
Places of abode in New York City	31
Voting and taxation there	34

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1938.

—7750

Findings of fact—Continued

Page

Massachusetts and Florida, 1921-1936 35
Round Hills Estate, South Dartmouth, Massachusetts 35
Activities, interests and associations at Round Hills 39
Voting and taxation in Mass 42
Physical condition after 1921 43
46 Star Island, Miami Beach, Florida 43
Star Island House 44
Household establishment and social activities in Florida 46
Voting and taxation there 47
Applicable principles of law 48
Conclusions 57
Recommendation for decree 57
Photographs: 59, 63
Round Hills, South Dartmouth, Massachusetts, 1 to 5 ..... 64, 69
46 Star Island, Miami Beach, Florida, 6 to 11 1
Appendix A: 408, 424
Digest (Vol. II)
Indices to testimony, exhibits and digest (Vol. II)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 11, Original

STATE OF TEXAS, Complainant

vs.

STATE OF FLORIDA et al., Defendants

REPORT OF THE SPECIAL MASTER

To the Supreme Court of the United States:

On March 15th, 1937, this Court granted the motion of the State of Texas for leave to file an original Bill of Complaint against the State of Florida, Commonwealth of Massachusetts, State of New York, Mabel Harlow Green and Hetty Sylvia Ann Howland Green Wilks to determine the domicile of Edward Howland Robinson Green, who died June 8th, 1936, at Lake Placid, Essex County, in the State of New York, where he was temporarily sojourning, leaving a gross estate estimated at $44,348,500 in value and a net estate estimated at $42,000,000, comprising real estate and tangible personal property located in the States of Texas, Florida, Massachusetts and New York said to be worth over $6,513,500 and intangible property, consisting of stocks, bonds and securities of the approximate value of $37,835,000, the bulk of which was represented by paper evidence within the State of New York and beyond the jurisdiction of the other States mentioned. The defendants were directed to answer and each filed answers, which were received May 24th, 1937 (300 U. S. 643 and 668).

THE PLEADINGS

The Bill of Complaint alleged that the case presented a controversy of a civil nature between two or more States of the United States of America and between a State and citi-

zen of another State within the original jurisdiction of this Court; that at the time of his death; said Green was domiciled in the State of Texas and not in either the States of Florida, Massachusetts or New York; that under the laws of Texas, a transfer, succession or inheritance tax was imposed upon and assessable against the estate of said decedent wherever located in the amount of approximately $5,326,000, which the State was entitled to receive and collect; that under the estate tax laws of the United States, the Federal Government would be entitled to collect a net estate tax of approximately $20,800,000; under the transfer, succession or inheritance tax laws of the State of Florida, said State, claiming to be the domicile, was attempting to levy and collect a tax of approximately $5,335,000; under similar laws of the Commonwealth of Massachusetts, said Commonwealth was attempting to levy and collect a tax of approximately $5,809,000; under similar laws of the State of New York, that State was attempting to levy and collect a tax of approximately $7,132,000; that the defendant, Hetty Sylvia Ann Howland Green Wilks, was the sister and the defendant, Mabel Harlow Green, was the widow of said decedent and respectively asserted the right and privilege of succession to all of the tangible and intangible personal property owned by said Green at the time of his death; that Green left him surviving no child or descendant; no brother or descendant of any deceased brother; no sister other than said Wilks and no descendant of a deceased sister, and no father or mother. It was further alleged that certain judicial proceedings had been instituted after his death in each of the States of Texas, Florida, Massachusetts and New York, as a result of which, on July 28th, 1936, said Mabel Harlow Green was appointed Temporary Administratrix of his estate by the County Court of Kaufman County, Texas, upon her allegation that Green died intestate and was domiciled in said Kaufman County, Texas; that on August 1, 1936, said defendant Wilks filed in the Surrogate's Court of Essex County, New York, a paper writing dated March 28th, 1908, purporting to be the Last Will and Testament of said Green, asked that it be admitted to probate and she be confirmed as the nominated Executrix thereof, alleging that said Green was a non-resident of the State of New York but died there leaving personal property therein situated and that in said proceeding said Mabel Harlow Green and the New York Tax Commissioner en-

tered their appearances; that in this proceeding, a Temporary Administrator was appointed and that the proceeding related solely to the administration of and right of succession to the property of decedent Green and did not involve the tax claims of the sovereign parties to this suit. The Bill further alleged that on August 31st, 1936, said Mabel Harlow Green commenced an action in the United States District Court for the Northern District of Texas at Dallas against said defendant Wilks to determine her rights in the property of the decedent growing out of the existence of a so-called antenuptial agreement which prevented the widow from asserting any claim or interest in the property of the decedent; that on or about October 21st, 1936, upon application of the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, a Special Administrator of the estate of said decedent was appointed by the Probate Court of Bristol County, Massachusetts, and he was directed to take possession of and conserve the property, etc. of said decedent within said Commonwealth; that on or about January 4th, 1937, upon application of said Mabel Harlow Green, she was appointed by the County Judges Court of Dade County, Florida, Administratrix of the estate of her husband located within the State of Florida. In its Bill, the State of Texas further asserted that it would not appear in any of the aforesaid proceedings and, upon information and belief, averred that neither the State of Florida, Commonwealth of Massachusetts nor the State of New York would appear in any thereof except to the extent they may have already appeared, as recited in Paragraph 26 of the Bill, and further asserted that no judgment entered therein would have any extraterritorial effect and that the only Court having the requisite jurisdiction to determine in such manner as to be decisive among the parties to the cause the question in which of the four claimant States said Green was domiciled at death was this Honorable Court.

The Bill of Complaint further alleged that under the laws of Texas that State had a lawful and exclusive lien for transfer, succession or inheritance taxes as the State of domicile upon the estate of said decedent, which has been jeopardized and which it will be unable to enforce without the intervention and assistance of this Honorable Court and that the property located within the State of Texas is, for all practical purposes, negligible in amount and insuffi-

cient to pay any tax now due and owing to the State of Texas; that the property in the estate of said decedent is not sufficient to satisfy the claims and asserted liens of the States of Florida, Massachusetts, New York and Texas, respectively, and the Federal estate tax due and owing to the United States, and in the event that said States should obtain an adjudication from some other Court or Courts favorable to their respective contentions as to the domicile of Green, the State of Texas would be unable to satisfy its just claim and lien and it would be deprived of its lawful right to a lien for said sum of approximately $5,326,000.

In their several answers, submitting to the jurisdiction of this Court, the sovereign parties defendant denied that Green was domiciled in the State of Texas and, by way of Cross Bill and Counterclaim against one another, each asserted that it was the domicile of said Green, that under its laws, as the domiciliary State, it had a claim against the estate of said Green and a lien upon all of the property of his estate for transfer, succession or inheritance taxes, which claim and lien it was asserting and proceeding to enforce and that it alone had the exclusive jurisdiction to impose and collect such taxes upon the real and tangible personal property within its jurisdiction and upon the intangible property owned by the decedent at the time of his death wherever located, and further that the question of domicile must be decided before the question of the tax liability could be settled. None of the parties challenged the right of the United States to collect the amount admitted to be due for Federal estate taxes.

The defendant, Mabel Harlow Green, admitted that her husband, at the time of his death, was domiciled in the State of Texas, in the City of Terrell, County of Kaufman, and averred that "under the laws of Texas, where the decedent was domiciled, she was the owner, at the time of his death, of one-half of the property inherited by the decedent between July 10th, 1917 and June 8th, 1936, which one-half was and is free from all Federal and State inheritance, succession or transfer taxes."

The defendant, Hetty Sylvia Ann Howland Green Wilks, in her answer, denied that Green was domiciled at any place within the State of Texas and prayed the Court to determine which, if any, of the State of Florida, the Commonwealth of Massachusetts or the State of New York was the domicile of said Green for the purpose of the taxation of his intangible personal property, etc.

THE ISSUE

The issue raised by the pleadings is: In which of the sovereign States aforesaid was Edward Howland Robinson Green domiciled at the time of his death, June 8th, 1936?

APPOINTMENT OF SPECIAL MASTER

On June 1, 1937, this Court granted the motion for the appointment of a Special Master (301 U. S. 671) and entered the following Order:

"The motion for the appointment of a Special Master, is granted and it is ordered that John S. Flannery, of Washington, D. C., be, and he is hereby, appointed Special Master in this cause, with authority to summon witnesses, issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to make findings of fact and conclusions of law, and to submit the same to this Court with all convenient speed, together with his recommendations for a decree. The findings, conclusions, and recommendations of the Master shall be subject to consideration, revision, or approval by the Court. The allowances to him, the compensation paid to his stenographic and clerical assistance, and the cost of printing his report shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. If the appointment herein made of a Master is not accepted, or if the place becomes vacant during the recess of the Court, the Chief Justice shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein." (57 S. Ct. Rep. 935.)

At the preliminary conference in Washington, D. C., in July, 1937, at which all of the parties to the cause were represented by counsel and the United States, though not a party, was represented by its special counsel, H. S. Middlemiss, of Washington, D. C., was appointed official reporter, the procedure was outlined and it was agreed that the hearings should commence at Dallas, Texas, October 10th, 1937, thereafter be held at such points in Texas as might be agreed upon, followed by hearings in New York, Massachusetts and Florida at such times and places as would suit the convenience of the parties, their counsel and witnesses.

Pursuant to this arrangement, hearings were held at Dallas, Fort Worth and Terrell, Texas, in October, 1937, at which most of the Texas case was presented and some evidence given on behalf of the other parties. Adjournment was then taken to reconvene at New York January 10, 1938, and at sessions extending through the remainder of the month further evidence was given by counsel for Texas and counsel for New York and the Commonwealth of Massachusetts presented most of their evidence in chief. Adjournment was then taken to New Bedford, Massachusetts, where, at sessions held the first part of February, Texas, New York and Massachusetts presented further evidence and some evidence was given on behalf of Florida. Because of the engagements of counsel, the hearings were suspended, to be resumed at Miami, Florida, April 10th, 1938, where the sessions were continued from day to day until all evidence was in.

At all of the hearings, the sovereign States were represented by their Attorneys General, special and associate counsel and by their Tax Commissioners, and the United States appeared by special counsel but did not participate in the proceedings—between twenty and twenty-four counsel and officials attended the various hearings. Mrs. Green, through her counsel, took an active part in the hearings in Texas but after her settlement with Mrs. Wilks and release of all interest in her deceased husband's estate, she was dismissed from the case, without costs, upon the stipulation of the parties by order entered herein January 17th, 1938 (302 U. S. 662). Mrs. Wilks was represented throughout the proceedings by her counsel.

Counsel exhaustively prepared and ably presented their respective cases and endeavored to bring out every fact which might aid the Court and have any bearing upon the question at issue without regard to its effect upon their several contentions.

OFFICIAL RECORD, REQUESTS FOR FINDINGS AND SUPPORTING MEMORANDA

Two sets of the typewritten transcript of the stenographic record, in eleven volumes, comprising 9800 pages of testimony and 1484 exhibits, fully indexed, are filed herewith.

At the conclusion of the hearings, counsel announced that they did not insist upon any exceptions taken in the

course of the proceedings to rulings of the Master, and were requested to submit to him by August 1st their respective requests for ultimate findings of fact, with supporting memoranda containing references to their local statutes and decisions. The sudden death of Attorney General Landis and the serious accident which incapacitated Special Assistant Attorney General Cole, shortly after the conclusion of the hearings, made it necessary to extend the date for the submission of requests for findings to September 1st.

Two printed copies of such requests for findings, with supporting memoranda, are herewith filed. They have been very helpful to the Master and carefully considered by him. In so far as the findings requested were supported by a fair preponderance of the whole evidence, they have been adopted; many have been rejected because they contained argumentative or evidentiary matter and some because they were partial and incomplete.

During the progress of the hearings at Terrell, Texas, New Bedford, Massachusetts, and Miami, Florida, the Master and counsel viewed the buildings in which Green had his bachelor quarters and maintained a room at Terrell; the Round Hills Estate at South Dartmouth, Massachusetts, and his residence at 46 Star Island, Miami Beach, Florida. The latter properties were placed in the condition in which they were last occupied by Colonel Green and photographic reproductions of some of the exhibits illustrating the character of the residences in Massachusetts and Florida are attached hereto for the convenience of the Court.

DIGEST OF THE EVIDENCE—APPENDIX A

In order to aid the Court and counsel for the respective parties and save the expense of printing voluminous extracts from the testimony and exhibits, the Master has prepared and files herewith, as Appendix A, two copies of a Digest of the Evidence and Exhibits, containing a summary of the testimony in the language of the witnesses and the important portions of the exhibits. As counsel for Texas state in their memorandum, "there is much in the record of no real materiality or significance upon the ultimate issues * * * there are many incidents and episodes which shed no light upon the question of domicile or

claimed abandonment." Counsel had industriously prepared their cases to cover the span of Green's life from early manhood to the grave and many trivial matters were introduced to show his local activities, attachments, friendships, business interests and habits which bore only a very remote relationship to the issues. Most of the important facts were undisputed, but as varying deductions and conclusions might be drawn therefrom, the Digest has been made much longer than would ordinarily be necessary. All references in the Digest are to the official Transcript of Record and most of the references herein are to pages of the Digest as printed. Indices embracing both the Digest and official Record also are filed herewith.

STATUTES

The local laws relied upon by the respective parties were introduced in evidence and have been copied in the Record at pages 9561 to 9685; D. 399-401. The more important Statutes relating to taxation, liens, etc., are given in the Appendices to the Pleadings.

IMPORTANT QUESTION FOR DECISION

Most questions of domicile are local but frequently have a national or international aspect. In this era of liberal expenditures and high taxation by governmental agencies, when the bulk of individual wealth is no longer in lands, buildings or personal chattels, but in intangible property which may be moved from place to place by migratory millionaires to escape taxation, until death enables the sovereignty having jurisdiction of the estate to assess and collect the taxes which follow domicile,—the questions here involved are becoming increasingly important to the Federal and State authorities. Where, as here, controversies over the right to tax arise between two or more sovereign States, this Court furnishes the only forum for their adjudication.

The determination of the domicile of a decedent as between his legal representatives and the State having jurisdiction of his property at the time of death, is primarily one for the local Courts of the State, but in this case the decedent had places of residence and valuable real and personal property in several different States, and up to the

[Note: Abbreviations—R, record; D, digest; I, indices.]

time of his death consistently claimed a legal residence in one of them, and kept the bulk of his intangibles in another.

The evidence clearly establishes, as the jurisdictional findings show, that the legal demands of Texas, Massachusetts and Florida for taxes exceed the amount of property within their respective jurisdictions and if any of these States, other than the one having jurisdiction of the intangibles, is finally held to be the domicile, it would have to enforce its rights against property of the decedent within the jurisdiction of another State by invoking the aid of this Court. The evidence also demonstrates that to allow each State to determine the question of domicile for itself and seize the property within its jurisdiction, would not only consume the whole of the decedent's estate but precipitate a controversy between sovereignties as to their respective rights and priorities, which the suit seeks to avoid.

A long line of decisions in this Court, culminated in 1932 in the case of *First National Bank* vs. *Maine* (284 U. S. 312, 328), in which it was held that the "shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by one State only"—the State of owner's domicile—except where such intangibles had acquired a definite situs in another jurisdiction. (See also *First Bank Stock Corp.* v. *Minn.*, 301 U. S. 234.) This, however, left each State free to determine the question of domicile for itself upon the facts presented to its local tribunals.

MULTIPLE TAXATION

Questions of multiple taxation have arisen in many cases between estates of decedents and sovereign States asserting their domiciliary right to tax,—such as the *Dorrance* litigation (287 U. S. 660; 288 U. S. 617; 296 U. S. 393; 298 U. S. 678; 298 U. S. 692); In Re: *Pusey's Estate* (321 Pa. 184, 184 Atl. 844; 299 U. S. 572), and *Riley* vs. *Worcester County Trust Co.* (301 U. S. 678),—which this Court was unable to consider for lack of a justiciable controversy between States, the failure to present a Federal question or because of the assertion of an unsubstantial constitutional right.

Many of the States (several of them parties to this litigation) and their taxing officials have undertaken to find

some amicable solution of these questions of double domicile and multiple taxation by submitting themselves to the jurisdiction of sister States as *In Re: Trowbridge's Estate* (266 N. Y. 283, 194 N. E. 756); by authorizing their taxing officials to intervene in the Federal Courts of another State, as in *Riley* vs. *Worcester, supra*, and by invoking the applicability of the Federal Interpleader Act and Declaratory Judgments Act. Arbitration and uniform legislation also have been tried with varying success, as suggested by Mr. Justice Holmes in his dissenting opinion in *Baldwin* v. *Missouri* (281 U. S. 586, 595); but the case at bar presents for the first time a clearly defined controversy between sovereign States, litigating in their own right and not for the benefit of a decedent's estate, which may be of great benefit in the solution of this important problem. Having submitted themselves to the jurisdiction of this Court for a determination of this question of domicile, upon which the right to tax the intangibles is predicated, this Court, in the exercise of its broad original jurisdiction, which may be moulded like that of the Chancery Courts to meet the exigencies of the case, would be able to prevent the multiple taxation which took place in the *Dorrance* Case, *supra*.

(For an excellent discussion of multiple taxation, the decisions of this Court leading up to *Texas* vs. *Florida*, et al., and the *Dorrance* litigation, see article of Francis C. Nash in the Georgetown Law Journal for January, 1938, Vol. 26, No. 2, pp. 288-342).

JURISDICTIONAL FACTS

The following jurisdictional facts, requested by the parties, are found to be established by the evidence:

The decedent, Edward H. R. Green, died at Lake Placid, New York, on the 8th of June, 1936. He was born in London, England, August 22, 1868, a citizen of the United States, of American parents who were domiciled and resided in Bellows Falls, Vermont. At the time of his death, Green was a citizen and resident of the United States.

The State of Texas, State of Florida, Commonwealth of Massachusetts and the State of New York are sovereign States of the United States of America, each claiming that at the time of his death Green was domiciled within its territorial limits, and that it is entitled to collect out of his estate a succession, transfer, inheritance and estate tax on the basis of such domicile.

Mabel Harlow Green, originally named as a party defendant in this cause, is the widow of said Green. Pursuant to a stipulation of the parties hereto showing that she had released all of her interest, if any, in the estate of said Green, the Bill of Complaint herein was dismissed as to her, without costs, by order of this Court entered January 17, 1938.

The defendant, Hetty Sylvia Ann Howland Green Wilks, is a citizen of the United States residing in the City of New York, State of New York, and is the sister of Green. Green left surviving him no child and no descendant of any deceased child; no brother and no descendant of any deceased brother; no sister other than the defendant Wilks; no descendant of any deceased sister, and no father and no mother. Green died testate, and the defendant Wilks is the sole surviving legatee, devisee and Executrix named in his Will. By virtue of these facts, including the release by Mabel Harlow Green, the defendant Wilks is entitled to the whole of Green's estate, subject to taxes and expenses of administration.

The value of Green's total gross estate at the time of his death was $40,144,229.73. Valid debts of the decedent at the time of his death aggregated the sum of $912,133.29. Said debts have all been paid. Administration expenses in said estate incurred to January 2, 1938, aggregate the sum of $1,319,760.78 and Executors' and Administrators' commissions to be actually taken by such Executors and Administrators amount to $1,275,000. Estimated administration expenses to be incurred subsequent to January 2, 1938, amount to $500,000. The total amount of such debts and administration expenses is $4,006,894.07, leaving a net estate of $36,137,335.66.

The intangible personal property of the estate had a value at the time of Green's death of $35,831,303.69. (D. 75, 76, 77, 81-87.)

The property taxable by the State of its situs irrespective of Green's domicile is as follows:

In the State of Texas, parcels of real estate having an aggregate value as of the date of death of $2,220, and no tangible personal property of any value situated therein; all other real estate and tangible property owned by Green at the time of his death was situated outside of the State of Texas;

In the State of Florida, real estate and tangible personal property owned by Green at the time of his death and situated in Florida having an aggregate value as of the date of death of $222,276.80;

In the State of New York, tangible personal property having an aggregate value as of the date of death of $1,583,221.82 and no real estate situated therein;

In the Commonwealth of Massachusetts, real estate and tangible personal property owned by Green at the time of his death and situated in Massachusetts having an aggregate value as of the date of death of $2,498,707.42;

In the State of Vermont, an interest in real estate having a value as of the date of death of $6,500, and no tangible personal property of any value situated therein. (D. 75, 76, 77, 81-87.)

All of the paper evidences representing intangible property owned by Green were physically outside of the State of Texas, the Commonwealth of Massachusetts and the State of Florida.

The aggregate value of the shares of stock in and obligations of corporations and associations organized or having a principal place of business in Texas, Massachusetts and Florida, respectively, and of the obligations of persons residing in said States and of the obligations of said States and political subdivisions thereof, together with the value of the real estate and tangible property in Texas, Massachusetts and Florida, respectively, is less than the amount of the tax claimed by each of said States and the amount of such tax claimed by Texas, Massachusetts and Florida, respectively, greatly exceeds the value of the property subject to the jurisdiction of their respective Courts and from which the tax might be collected in any proceeding in said Courts.

At the time of Green's death, the United States imposed an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-D (Appendix E of Bill of Complaint), under which provisions the gross amount of the Federal estate tax imposed upon the estate is $22,769,761.61. After giving effect to the credit allowed under said laws for the payment of estate and inheritance taxes to the State or States to which said taxes may be due, up to 80% of the amount due to the United States Government under the Revenue Act of 1926, the total net tax pay-

able to the United States by said estate is $17,520,987.93. All of said tax has heretofore been paid by the estate to the United States.

At the time of Green's death, the State of Texas imposed inheritance, succession, transfer and estate taxes by statutes, the provisions of which are set forth in Texas Exhibit 317 (Appendix A of Bill of Complaint), under which the amount of tax owned by the estate to the State of Texas, on the basis that Green died domiciled within said State, is $4,685,057.73. The State of Texas, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said tax laws of the State of Texas, prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the State of Florida imposed an estate tax by a statute, the provisions of which are set forth in Texas Exhibit 317-B (Appendix A of Florida's Answer), under which the amount of taxes owed by the estate to the State of Florida, on the basis that Green died domiciled within said State, is $4,663,857.40. The State of Florida, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said tax laws of the State of Florida. Prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the State of New York imposed an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-C (Appendix A of New York's Answer), under which the amount of taxes owed by the estate to the State of New York, on the basis that Green died domiciled within said State, is $5,910,301.80. The State of New York, by its duly authorized officials, has determined that Green died domiciled within such State, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by

said tax laws of the State of New York. Prior to the commencement of these proceedings, said State, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

At the time of Green's death, the Commonwealth of Massachusetts imposed a succession or inheritance tax and an estate tax by statutes, the provisions of which are set forth in Texas Exhibit 317-A (Appendix C of Bill of Complaint), under which the amount of taxes owed by the estate to the Commonwealth of Massachusetts, on the basis that Green died domiciled within said Commonwealth, is $4,947,008.59. The Commonwealth of Massachusetts, by its duly authorized officials, has determined that Green died domiciled within such Commonwealth, and is asserting a lien for said amount upon the intangible property of the estate wherever located, as provided by said laws of the Commonwealth of Massachusetts. Prior to the commencement of these proceedings, said Commonwealth, in good faith, was preparing to enforce said lien and to collect said tax, and would now be taking appropriate action to that end were it not for the present proceedings.

The State of Vermont neither claims nor asserts that Green died domiciled within such State, nor claims inheritance, succession, transfer or estate taxes on the basis of such residence. The amount of tax payable to the State of Vermont in respect of the property situated therein, on the basis that Green died a non-resident of said State, is $325.00.

The Federal estate tax and the aforesaid claims for estate, transfer, succession and inheritance taxes of the States of Texas, Florida and New York and the Commonwealth of Massachusetts aggregate $37,727,213.45. The value of Green's net estate is insufficient by the amount of $1,589,877.79 to satisfy said claims. (D. 81-87.)

In the foregoing calculations, the claim of the State of New York that Green was indebted to it on account of personal income taxes for the years 1919 to 1936, inclusive, which, with interest to the date of his death, amount to $920,827.35, was not treated as a valid claim except in calculating the amount of the estate tax claimed by the State of New York. If the claim should be treated as a valid claim for purposes of the other calculations, the deficiency

of the estate to satisfy the tax claims of the various States would be increased and would be greater than said sum of $1,589,877.79. (D. 85.)

This cause was instituted and prosecuted by the complainant, the State of Texas, seeking the protection of this Court of its right to enforce and satisfy the obligation and lien which it claims as the State of domicile of said Green for transfer, succession or inheritance taxes, solely in its own behalf and upon behalf of no other party or person.

By reason of the foregoing claims of the defendant States, and the insufficiency of the estate as hereinbefore found, the rights of the complainant, the State of Texas, and its claim of lien for transfer, succession, inheritance or estate taxes, are now in jeopardy and the complainant is suffering and sustaining and will further suffer and sustain actual pecuniary injury to its said rights and claim, and said State has no adequate remedy save in this Court.

The entry of a judgment by this Court in this case, adjudicating the domicile of Green at the time of his death, will not affect the distribution of his estate nor interfere with the ultimate administration thereof by the State Courts of appropriate jurisdiction.

As averred in the pleadings, none of the States which are parties hereto has become or will consent to become a party to any proceeding in the Courts of any of said States.

The cause presents an actual justiciable controversy of a civil nature between the complainant, the State of Texas, and the defendants, the State of Florida, the State of New York and the Commonwealth of Massachusetts, of which this Court has exclusive original jurisdiction.

LEGAL DEFINITION OF DOMICILE

Counsel for Texas, in their memorandum, say:

"Texas has no statute or statutes, of general application, defining domicile. The case is determined generally by common law principles or by general law; and the law of Texas on the subject is the same as that recognized in other jurisdictions,"

and cite from Texas Jurisprudence, Vol. 15, pp. 707 to 719, as follows:

"In its ordinary acceptation the term 'domicile' means a place where a person lives or has his home. In a strict

and legal sense the domicile of a person is the place where he has his true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning—or in other language the place in which he has his fixed habitation, without any present intention of removing therefrom. It will thus be seen that two things must concur to constitute domicile: First, residence; and second, the intention of making the place of residence one's home. There must be conduct accompanied by intention. It follows that in the strict significance of the term 'domicile' a person can be domiciled in but one place.

"* * * While a person who is *sui juris* may change his domicile as often as he pleases so to do, an established domicile is never gone until a new one has been acquired *facto et animo*. Where a person leaves the state in which he has had his domicile with the intention of acquiring a domicile in another state, he still retains his original domicile until he actually sets foot in the latter state with the intention of remaining (*animo manendi*). As observed in the foregoing pages, the acquisition of a domicile does not depend simply upon the residence of the party; the fact of residence must be accompanied by the intention of residing permanently in the new domicile and abandoning the former. The act and the intention must concur to enable a person to acquire a domicile.

"If a person leaves his home for temporary purposes, with the intention to return to it, this change of place is not in law a change of domicile. One having acquired domicile does not lose it without removal from it with intent not to return. Domicile remains unaffected by any temporary residence abroad, and is not changed until a new one is formed by settlement in the new place with the intention of there remaining at it as home."

Evidently the Texas case and the findings of fact requested by her counsel were prepared with this local law of the State in mind. The evidence for Texas traces Green's life from 1892, when he went to Texas, until his death at Lake Placid, New York, June 8, 1936, for the purpose of showing that his domicile of choice first established in Texas when he was twenty-four years of age was never thereafter abandoned, although at the time of his death he had a residence at Round Hills, South Dartmouth, Massachusetts, another at 46 Star Island, Miami Beach, Florida, and a non-house-

keeping apartment in the Sherry-Netherland Hotel in New York City.

Counsel for the defendants insist that the solution of the problem depends upon a study of Green's relation to these different places of abode and in their respective memoranda they apparently rely upon the definition of "home" as distinguished from residence or dwelling place in the *American Law Institute's Restatement of the Law of Conflict of Laws*, Sec. 13, p. 24, where "home" is defined as

"a home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of the relation between the person and the place"

and that helpful factors to be considered in making such a study are:

"c. *Factors important in determining home.* In determining whether a dwelling-place is a person's home, consideration should be give to:

1. Its physical characteristics;
2. The time he spends therein;
3. The things he does therein;
4. The persons and things therein;
5. His mental attitude towards the place;
6. His intention when absent to return to the place.
7. Elements of other dwelling-places of the person concerned."

In the presentation of their evidence and in their several requests for findings, the defendants have emphasized these factors for the determination of "home."

The defendants all proceed upon the theory that what happened prior to the time when Green moved into his several places of abode is not material and only of historical interest and that the place where he had his principal, predominate habitation and permanent home at the time of his death was his domicile regardless of the past, citing Secs. 13, 14 and 15 to 25 of said Restatement of Conflict of Laws, Beale's Conflict of Laws, V. 1, Sec. 19.2, and other authorities.

Counsel for Florida, in their memorandum, quote from the leading case of *Smith* vs. *Croom*, in the Supreme Court of the State of Florida (7 Fla. 153), where that Court, after citing with approval Phillimore's Law of Domicil, p. 18:

"Domicil answers very much to the common meaning of our word home, and where a person possesses two residences, the phrase 'he made the latter his home,' would point out that to be his domicil,"

comments,

"We like this conception of the word home * * * It is the word whose essential meaning comes up fully to our idea of domicil. It is a word which admits not of qualification. To speak of a permanent home is to perpetrate a tautology—to speak of a temporary home is to involve a contradiction of terms. It is a word which finds its true interpretation in the instincts of our nature. It is a word the full meaning of which is of universal appreciation; it is understood alike by the degraded savage and the classic Greek—by the Republican serf and the refined Roman. Wherever that spot is found there the law fixes the domicil of succession, it matters not whether that be upon the wasted hills of the 'North State' or on the virgin plains of the 'land of Flowers'.—The determination of that locality is the subject of evidence, and that evidence must establish two points—first an actual residence, and secondly the deliberate intention to make it his home, in the acceptation in which it is used in the foregoing citation."

Counsel for New York, in their memorandum, after citing the Restatement of the Law of Conflict of Laws, give a very concise summary of the leading authorities on the subject of domicile, pages 10 to 18. See also Bouvier, "domicil."

The Master has not adopted either method of analysis exclusively but has followed both and finds they lead to the same result.

In most cases of domicile many factors are present which are helpful in reaching a conclusion, but as the following recitals of fact illustrate, here they confuse rather than clarify the issue. Most of the facts are undisputed and it is the deduction from such facts that causes difficulty and gives rise to controversy.

FINDINGS OF FACT

Ancestry and Education

Edward Howland Robinson Green was born at the Langham Hotel, London, England, on August 22nd, 1868, the son of Edward Henry Green and Hetty Howland Robinson Green (née Robinson). His parents were both domiciled at Bellows Falls, Vermont, where Edward Henry Green died on March 19th, 1902, and where he was buried.

On both his father's and mother's side, Green was of Colonial ancestry; his mother's ancestors—the Howlands—had settled in New Bedford, Massachusetts, and acquired extensive land grants in the adjacent Town of Dartmouth in the 17th Century, of which about 130 acres were inherited by Hetty Green. She was born and raised in New Bedford and her nearest relatives were there and in South Dartmouth. The fortune which she had inherited from her Howland and Robinson ancestors had its origin in the whaling industry of New Bedford and at the time of her death in 1916, it had grown to $67,000,000 and under her Will became the property of her surviving children—her son, Edward H. R. Green, and her daughter, Sylvia Ann Howland Green Wilks.

Green's education was obtained in the public schools of Vermont and New York, and in the years 1886 and 1887 he attended Fordham College, New York. Later, he developed by private study a wide fund of scientific information. His tastes were not artistic or literary, he had an excellent memory, a flair for experimentation and manifested a keen interest in astronomy, geology, electricity, photography, radio and X-ray, established an elaborate physical laboratory at Terrell, Texas, which he subsequently gave to a school at Denton, Texas, constructed an observatory on his house in Dallas and made many improvements in railroad transportation. At Round Hills, Massachusetts, he conducted alone and with the Massachusetts Institute of Technology various investigations and experiments for radio communication with airplanes, long distance photography, television, moving pictures, fog dissipation and aviation.

Personal Characteristics

In his prime, Green was six feet four inches tall and weighed nearly 300 pounds. At the age of twenty-one, his left leg was amputated above the knee as the result of an

accident in youth and thereafter he used a cork leg. Notwithstanding this handicap, he was strong, robust and energetic until November, 1921, when he suffered an acute traumatic arthritis in the knee of his right leg, which thereafter greatly interfered with his movements. He was always interested in outdoor sports and amusements; in Texas, he had the first automobile and encouraged racing, participated in minstrel shows and dramatics, aided in the organization of a military company, and organized a baseball and fishing club. In New York, he was fond of attending the theater and baseball games until incapacitated, and in Massachusetts and Florida, took an active interest in yachting and boating, owned a number of boats, and gave trophies for water sports.

While personally modest and unassuming, he enjoyed publicity and did things in a grandiose way. He joined clubs, societies and social organizations in every community where he dwelt but never attended them. He cared nothing for society and never went to social functions; his preference always was for the "man in the street" and for society *en masse*. He mixed largely with local residents of the places where he lived and made himself very popular, was always jovial and genial, democratic and public spirited. His close friendships were those formed in the early days in Texas. He had inherited from his New England ancestors a fondness for the water and seashore, and throughout his life he was also intelligently interested in things horticultural and agricultural, established an experimental farm and floral company in Texas and surrounded his places at Round Hills and Star Island with thousands of roses and rare plants.

He had no religious affiliations but contributed substantial sums to charitable organizations wherever he happened to be. He made large contributions to the Massachusetts Institute of Technology at Cambridge, Massachusetts, for scientific research and to Wellesley College in Massachusetts and St. Mary's Girls School at Peekskill, New York, jointly with his sister, Mrs. Wilks, as a memorial to their mother. In his latter years, he enjoyed the society of young girls and between 1919 and the time of his death, he had a number of protegées, most of whom were daughters of old Texas friends and of acquaintances in Massachusetts; sent them to private schools and colleges; had them spend a portion of their vacations with him and his wife at Round Hills, and supplied them with clothing, jewelry and automobiles and carried on an extensive correspondence in which he kept

himself advised of their progress and gave them much good advice. He was familiarly known to them as "Uncle Ned."

Acquisition and Accumulation of Wealth

In his latter years, when physical infirmities and illness restricted his activities and he was compelled to spend much of his time indoors, he developed many hobbies, became a collector of rare stamps, and later of rare coins and currency, and jewels and at the time of his death had in his apartment in New York, in the banks of New York and in the vaults at Round Hills collections valued at nearly $4,000,000 (75-76). He usually travelled with 28 trunks containing his miscellaneous collections and at his Round Hills and Star Island homes had an immense number of jig-saw puzzles and moving picture films.

Aside from his railroad activities in Texas between 1892 and 1911, he was never in any active business or devoted to the making of money, and although maintaining an office in New York City, he relied largely upon an efficient manager and never visited this office after his serious illness in 1921. His large fortune was the result of inheritance, tax avoidance and income accumulation. While in Texas, he was largely dependent upon his mother for support and upon coming to New York in 1911, his mother gave him stock in one of her Holding Companies worth about $500,000. When he inherited his interest in his mother's estate after her death in 1916, he was 48 years old and unmarried. Under her Will, he became entitled to the residuary estate of his Grandfather Robinson, which was worth about $4,500,000, and to the income from one-half of his mother's residuary estate, which was kept in trust for a period of ten years after her death, and if he survived, to one-half of the estate outright. This one-half interest in 1926 had a value of about $33,000,000, and his income from 1917 on was from $200,000 to $1,200,000, and over a period of years averaged in excess of $1,500,000. Substantially all of this income was spent by him for his personal expenses, in the building and maintenance of his costly dwellings, upon his boats, hobbies and experiments, including the radio station, airport and Whaling Memorial at South Dartmouth. During all of this period his Federal income taxes were very large, but aside from these and his real and personal property taxes in the various jurisdictions where he dwelt, and his poll taxes in Texas, he paid no income or personal taxes to any State, and thus, by tax savings and conservative investments, accumu-

lated an estate estimated at over $42,000,000 at the time of his death. (D. 118-157.)

On July 10th, 1917, he married at Highland Park, Illinois, Miss Mabel Emerson Harlow, who had been his companion and housekeeper for many years in Texas and New York. Prior to the marriage, they had entered into an antenuptial agreement by which she released her rights in his estate. There were no children of the marriage and at the time of his death her interest in the estate was confined to whatever rights she may have had under the community laws of Texas as asserted in her answer.

Under his Will executed in 1908, his mother was made beneficiary and upon her death the whole estate was devised to his sister, Mrs. Wilks. The proceedings instituted for the probate of this Will in the Surrogate's Court of Essex County, New York, while the hearings in this case were in progress, resulted in a settlement of the controversy between the widow and sister and a release by Mrs. Green of all claims upon her husband's estate.

Domiciliary Periods of His Life

With reference to domicile, Green's life, after he had reached man's estate, may be divided into three periods: (1) his early manhood in Texas from 1892 to 1911; (2) his business career in New York from 1911 to 1921, and (3) the period of decline and pursuit of health from 1921 to his death in 1936.

The first period when he was engaged in the railroad business in Texas was probably the happiest of his life; the second covers the years when he was called to New York to take up his mother's burdens in the management of her vast estate until her death in July, 1916, the settlement of her estate in accordance with the provisions of her Will, (of which he was Executor and Trustee,) until he was stricken in November, 1921, and the third, or twilight years, when he was unable to pursue the outdoor existence he loved, when he was cut off from his old friends in Texas, unable to take long trips except for health, unable to go to his office in New York City or to give more than a passing attention to business affairs, and when he found himself in possession of an enormous fortune, which he began to spend freely in the erection of beautiful homes at South Dartmouth and Star Island and in the cultivation of his hobbies.

Life in Texas from 1892 to 1911

Texas Midland Railroad

For a few years prior to 1891, Green was in Chicago on his mother's business. In 1892, he went to Texas for the purpose of foreclosing a mortgage held by his mother on a piece of railroad then called the Texas Central, of which he took charge, becoming President, Manager and Director. At the time he took over a portion of the road, its name was changed to the Texas Midland Railroad and its headquarters and shops were maintained at Terrell, Texas, the junction of the road with the Texas and Pacific. The road was 54 miles long, in bad repair and with dilapidated equipment. Green devoted his efforts to the task of rehabilitation, converted it into an independent line and gradually extended it to a connection with other railroads until he had more than doubled its length. He rebuilt the road in a substantial manner and introduced many improvements and innovations such as vestibuled coaches, the first electrically lighted trains, electric headlights, the first gas-electric motor cars, dining service and experimented with an air-cooling system. With the exception of the period of Federal control, he retained close supervision of the road up to the time of its sale to the Southern Pacific in 1928. Substantially all of the stock of the railroad was owned by his mother and transferred to the Westminster Company in 1911. After 1911, the active management was left to the subordinate officers who were close friends of Green and weekly reports were made to him by them wherever he happened to be. At the time of the sale in 1928, it was one of the largest cotton carrying roads in Texas for its mileage. The road, however, was never a financial success.

From 1911 through 1921, Green habitually made two trips a year to Texas, visiting Terrell and Dallas in the Spring to attend an annual meeting of the railroad, and again in October or November to inspect the road, and in alternate years to vote in Terrell at the State and Municipal elections. In some years he made an additional trip. The Spring and Fall visits were at first three or four weeks long and later were reduced to one or two weeks. From 1922 through 1927, he made but one visit a year to Texas, in the first half of the year, and omitted the Fall visit. He

visited Dallas and Terrell for two weeks in 1922 and 1
and thereafter spent only two or three days on each t
to Texas in Terrell and its vicinity, attending the railr
meetings and inspecting the line. On these latter vis
most of his time was spent at Marlin, Texas, receiving m
ical treatment. In 1922, he was in Marlin for treatment
three months and in the years 1924 to 1927, he was there
a month each year. After 1927, when the agreement to
the road was made, he never made another visit to Dal
or Terrell and his only visit to Texas was in 1935 for tre
ment at the Buie Clinic at Marlin.

Domestic Establishments in Texas

In 1897, Green acquired a private car known as the "Lo
Star," which was burned in 1907 and rebuilt as "No. 99
This car was left on a siding at Terrell available for
use at all times until April 1st, 1928. He used it on all
his inspection trips and sometimes lived in it for as mu
as two weeks at a time. It was elaborately furnished, wi
a dining room, kitchen, office quarters, reception room a
state rooms. He travelled extensively in it throughout t
Southwest. From 1896 to 1907, he spent more time in
private car than anywhere else.

Green's first living quarters in Texas were in an unpr
tentious hostelry called the Harris House. Subsequent
about 1894, he moved into a building then known as t
Opera House, where he maintained bachelor quarters in t
"Green Flats," on the second floor of the building, with tw
of his railroad associates, and had his railroad office in t
same building. He also had rooms at the Windsor Hotel
Dallas and about 1896 or 1897, he leased the second and thi
floors of a building at Elm and Garfield Streets in Dalla
which he remodeled into comfortable living quarters. Late
he purchased a three-story building on Commerce Street
the business quarter of Dallas back of the City Hall, t
interior of which he converted and remodeled at conside
able expense. He occupied the entire building, which co
tained twelve or fourteen living rooms, until the buildin
was sold to the Municipality in September, 1911. He als
had political headquarters at the Oriental Hotel in Dalla
After the sale of his Commerce Street Building, Gree
caused one of his friends to rent a room for him in th
home of Mrs. Jarvis, 503 Pacific Avenue, Terrell, for $5.0

a month. The rent was paid for three years and then stopped and the room no longer held for him. He sent to the room a box containing a pair of trousers and a vest but was never seen by Mrs. Jarvis in the house. This room was admittedly taken to preserve his right to vote in Texas. He also had a 200-acre experimental farm near Terrell where there were living quarters which he occasionally used. This was afterwards sold and from 1911 on he did not have a vestige of dwelling place in Texas except his private car which was sold with the road in 1927-28. While living in the car and in his bachelor quarters at Terrell, he had two colored boys as servants and at Dallas, he had a modest but comfortable establishment with three servants and Miss Harlow (afterwards Mrs. Green) as his companion and housekeeper. When he removed to New York in 1911, all of the best furniture in the Dallas residence was packed and shipped there for use in his New York dwelling and his library of books on scientific subjects was given to the Dallas Public Library. When he visited in Texas in subsequent years, he always stopped at the Adolphus Hotel in Dallas or at the Buie Sanitarium in Marlin. Dr. Buie and other friends of his suggested that he purchase a house in Marlin but he never acted upon the suggestion, and at the time of his death his only real property in Texas consisted of some unsalable lots pertaining to the railroad which were appraised at $2200.

Associations and Activities in Texas

Aside from his railroad activities, Green engaged in farming of an experimental nature upon his farm of 200 acres, became a stockholder and director of the American National Bank of Terrell, of the American Exchange National Bank of Dallas, of the Murray Company and other industrial corporations in Texas, and in conjunction with the United States Department of Agriculture and State authorities he experimented for the control of the boll weevil, which was destroying the cotton crops and seriously affecting the railroad traffic; experimented with cottonseed meal for human consumption; with the use of the round bale for cotton; with the terracing and conservation of land against wind and water erosion; with the use of lignite deposits for fuel and used it in the railroad shops, and prospected to some extent along the line of his railroad and elsewhere for oil.

He developed thirteen acres of greenhouses and was one of the first rosarians in Texas, and also engaged in the poultry and pecan culture. He brought the first automobile to Texas and developed auto racing; became interested in aeronautics and organized an aviation meet at Dallas; was active in the formation of the Texas State Fair at Dallas; placed an order for the first airplane to be brought to the Fair; was State Commissioner of the World's Fair at St. Louis in 1904 and assisted in the development of the Texas Centennial by the purchase of anniversary coins and stamps in 1934. He had the first motion picture machine in Terrell and aided in the organization of the Green Cadets and Zouaves, a military company named for him. He subscribed through a bank in Terrell for $5,000,000 of Liberty Bonds during the World War and made a deposit of $250,000 to the order of the First National Bank of Terrell in 1920 although not financially interested in it to save it when a run was anticipated. In 1921, he opened an account for $100,000 in the Security National Bank of Dallas when a run occurred, to save it from failing.

In 1896, he became interested in Texas politics and was elected a delegate from Kaufman County to the Republican National Convention at St. Louis; was made Chairman of the Republican and State Executive Committee at the Fort Worth Convention and served in that capacity for four years and upon re-election, served until 1900; he was the leader of the Green-McDonald faction of the Republican Party and at the Houston Convention in 1906, was nominated for Governor of Texas, but declined upon the insistence of his mother. His faction seated its delegates in the National Convention of 1912, supporting Mr. Taft, and were for Mr. Hughes in 1916 and for General Wood in 1920. Between 1896 and 1900, he controlled the Federal patronage. In 1911 he ardently supported Colquitt for Governor and upon his election, was appointed a Colonel upon the Governor's Staff and served in that capacity until January, 1915. He contributed largely to the National, State and Municipal Campaign Funds, even after he gave up active participation in politics.

Voting, Taxation and Social Interests There

He voted at State and National elections in Texas prior and subsequent to 1911 until 1920 and paid his poll tax entitling him to register and vote until after he was 60

years of age, although under the laws of Texas he was not obliged to pay a poll tax because of his physical infirmity.

He never went into Texas society or entertained in any of his establishments, and aside from his political associates, black and white, his close friends were few but he remained loyal to them throughout his life and kept in close contact with them by correspondence and gifts of jewelry, etc. He said he liked the wide open spaces of Texas, the freedom from conventionality and the sterling character of the people and always remained loyal to his early associates there. In 1923, he created the "Terrell Trust" for several of his protegées, to whose education and maintenance he had contributed for years, and named his friend, Walter P. Allen, of Terrell, and his sister as Trustees. Vacancies in the Trust were to be filled by two of his old Dallas friends and in 1933, after their death, an amendment was made authorizing some one from Texas to fill vacancies. When seriously ill in 1935, he expressed a desire to be taken to Marlin for treatment, and again, in 1936, he asked Dr. Roche, in Florida, that he be taken to Texas but his medical advisers thought a higher altitude would be more beneficial and he went to Lake Placid, where he died.

Uniformity of Declarations Regarding His Legal Residence

With few exceptions, in substantially all deeds, papers and legal documents he described himself as "of Terrell, Texas," and instructed Marshall, his secretary, and Potter, his office manager, and his attorneys in New York, Massachusetts and Florida to always insert in important legal documents Terrell as his legal residence. All of his Federal income tax returns were filed in Texas and the registration of his yacht and numerous boats showed Galveston as the home port. In his Will executed in 1908, in his application for a marriage license in 1917, in the probate proceedings connected with his mother's estate in 1916-18, and in genealogical articles which he signed or authorized he described himself as of Terrell, Texas. In 1922, he declined to consider running for Congress in Massachusetts because he claimed to be a resident of Texas. In 1929, he stated that he would not be available for appointment as Federal Radio Commissioner from New England because he was a rabid Republican, formerly National Committeeman from Texas and only spent the Summer months in

New England. On March 29th, 1935, he testified under oath in Florida, that his residence was Terrell, Texas, with a Winter home in Florida and a Summer home in New Bedford, and in January, 1935, he returned to the Texas Centennial Committee a certificate which described him as of Massachusetts, with the statement "I have never changed my legal residence from Terrell, Texas," and in almost all of his declarations, oral or written, up to the time of his death he insisted that Texas was his legal residence. If mental state alone, as evidenced by declarations, could establish domicile, Green remained a Texan up to the time of his death.

Life and Activities in New York From 1911 to 1921

Green's mother became ill in 1910 and he went to New York about July 21st, 1910, accompanied by his secretary, Walter Marshall, and took quarters at the Waldorf Hotel, where they lived and he conducted his business. He returned to Texas in November, 1910, and told his mother he would be ready to come North whenever needed. He informed his railroad associates that it would be necessary to spend more time in the East because of his mother's advanced age and illness and they would have to manage the Texas Midland Railroad themselves under his supervision. Marshall brought his family to New York and in July, 1911, Green caused all of his household belongings and automobiles to be packed and shipped to New York. Mabel Harlow followed him and they moved to 5 West Ninetieth Street, which was owned by the estate of his grandfather, Edward Mott Robinson. A few months after his arrival in New York, he opened an office at 111 Broadway, where his secretary Marshall stayed until 1913, when he left Green's service, later returning to him after his mother's death. Until her death, Green and his mother maintained joint offices at 7 West Ninetieth Street, where his mother lived and died July 8th, 1916. This building also was owned by the Robinson Estate. After her death, the offices were transferred to 111 Broadway which remained Green's business headquarters until his death in 1936.

Green at that time was possessed of a personal fortune of about $500,000 and after his mother's death, as hereinbefore stated, received in his own right about $4,500,000 from

the estate of his Grandfather Robinson. On July 10th, 1917, Green and Miss Harlow were married at Highland Park, Illinois, and on October 31, 1917, started on a wedding trip for Galveston, Texas, in the yacht "United States," an old lake steamer which he had purchased October 3rd, 1916, enlarged and refitted. On January 17th, 1918, Green and his wife moved from 5 West Ninetieth Street to the Waldorf Hotel, allowing their furniture to remain in the Ninetieth Street house until it was later shipped to Round Hills, Massachusetts. Upon his return, Green remained in New York until June 30th, 1918, and then went to South Dartmouth, where he and his wife lived on the "United States", Green coming to New York for a few days in the middle of each week. They returned to New York in the Fall and spent the remainder of the Winter of 1918-19 there, leaving for Texas in May, 1919. The "United States" stayed at the wharf at Padanaram, near South Dartmouth, during this Winter and was kept fully manned with a crew of 72 men. With the exception of a few short trips, it remained there until it sank August 21st, 1919. Green and his wife stayed at the Tabitha Inn at Fairhaven, opposite New Bedford, until October, 1919, when he again left for Texas. Upon his return, he stopped at the Waldorf during the Winter of 1919-20 until July 1, 1920; spent the Summer with his wife on his boat "Day Dream" off Fairhaven, coming back to New York in October, 1920, leaving for Texas in November and lived at the Waldorf with his wife during the Winter of 1920-21 until May, 1921, when he again went to Texas. From 1918 to 1921, Green spent about two-thirds of his time in New York City.

This period from 1911 to 1921 was the most active of Green's business career. He was managing his own fortune, which had increased until at the time of his mother's death it was approximately $6,000,000, handling his sister's business, assisting his mother with her affairs until her death and thereafter acting as Executor and Trustee of her vast estate, directing the family-owned holding companies, besides supervising the affairs of the Texas Midland Railroad. He became a Director of the Seaboard National Bank July 7th, 1918, and attended meetings with some regularity until the latter part of 1921. Later, he became a Director by successive mergers of the Equitable Trust Company and

the Chase National Bank and was a director of the latter institution at the time of his death. Until 1920, it was his custom to go to his office in the morning, then to the Seaboard Bank, where he had a large chair specially built for him next to that of the President and conducted much of his business, sometimes returning to the office in the afternoon. He also was a Director of the Columbia Trust Company and of the New York Produce Exchange Safe Deposit and Trust Company. Wilbur K. Potter was in full charge of the office, 111 Broadway, his official headquarters and business address, with a complement of bookkeepers and stenographers. Here all accounts were kept, investment information assembled, disbursements made and all records preserved of Green's personal business, his mother's estate and his sister's business and that of the family corporations in which they were interested.

In 1911, the Westminster Company was incorporated under the laws of New Jersey to take over the affairs of Mrs. Hetty Green and Green became President. It was an Investment Company, of which Mrs. Hetty Green owned 51% of the stock and Green the remainder. It did no business for outsiders. After Mrs. Hetty Green's death, its operations decreased and eventually it was liquidated, at the expiration of the period of ten years from her death. The Windham Realization Company was organized under the laws of New York in 1912 for the purpose of foreclosing mortgages owned by Hetty Green. Green became its President and managed its affairs. While still in existence, it is practically dormant. It did no business for the public. Green Estate, Incorporated, was created under the laws of Delaware January 5th, 1927, at the expiration of the ten-year trust established by Hetty Green's Will, to hold intact the assets of her estate, except non-taxable Government, State and Municipal Bonds and some cash. Green and his sister each own one-half of the stock. Stockholders' meetings were held annually and directors' meetings two or three times a year. The business of the Company was principally the collection of interest and dividends and making distributions to its two stockholders. Green was the final arbiter of its affairs and determined its investment policy. It carried very large cash balances and certificates of deposit in New York Banks running into millions of dollars. It controlled no other corporations and did no business

for the public. Green's New York accounts ran all the way from an overdraft to $1,500,000, and the average was between $200,000 and $400,000. All funds for investment were kept in New York City Banks. Green's personal securities were kept in New York City in the National Park Bank, the Seaboard National Bank and in a fireproof, burglary proof safe in the office, 111 Broadway. He also had storage space in the vaults of the New York Produce Exchange Safe Deposit and Storage Company, of which Green was a Trustee at the time of his death. He also was a Trustee in the Columbia Trust Company from 1912 until he declined re-election in 1920 and attended its meetings with fair regularity until 1919. He attended no meetings of the Trustees of the New York Produce Exchange Safe Deposit and Storage Company after January 9th, 1918. Potter testified that Green spent about four or five hours a week at the office prior to his mother's death, that while the properties managed were extensive and varied, few sales were made and there was little business activity at the office; there were no stock transactions and the principal business was lending money on call, mortgage securities and the investment and reinvestment in tax exempt bonds. (D. 118-157.)

During this period, Green was also a member of numerous clubs, associations and societies in New York but never attended their meetings or visited them.

After his illness in November, 1921, all of his activities in New York ceased; the last bank directors' meeting he attended was October 20th, 1921, and he never went to his office, 111 Broadway, after that date and kept in touch with it by visits from Potter or by correspondence.

Green never entertained socially in New York but occasionally gave theater parties to some of his young protegées. Until 1921, he went to baseball games in the afternoon and to the theater in the evening. After 1921, his evenings were spent in his apartment playing games, listening to the radio and working on his stamp collection. He had no close personal friends or associates in New York. The confinement resulting from this indoor life bored him and made him unhappy.

Places of Abode in New York City

The two four-story brown stone front buildings, 5 and 7 West Ninetieth Street, owned by the Estate of Edward Mott

Robinson, Green's grandfather, were in a residential neighborhood in a transition stage just off Central Park West. Upon his arrival in New York in 1911, Green took up his residence in No. 5 and there maintained a domestic establishment with Miss Harlow. The house was comfortably furnished and he installed a new furnace and had an organ and billiard table. The first floor contained a sitting room and dining room, the second the bedrooms occupied by Green and Miss Harlow and the third contained a billiard room and guest room and the fourth servants' bedrooms and a store room. In the basement were the kitchen, servants' quarters and laundry. They had two Japanese servants and a maid and took their meals there. Each had a Pierce-Arrow car and from 1914 to 1918 Green also had a Benz car, all of which were kept on storage in New York City and there registered. His mother visited him there frequently and they had some other visitors. After their marriage in July, 1917, and upon their return from their honeymoon on the yacht "United States," they spent a couple of weeks at 5 West Ninetieth Street and during the latter half of 1917, lived on the "United States" anchored off West Eighty-Sixth Street; after the holidays they moved to the Waldorf-Astoria Hotel, where they occupied an eight-room apartment, consisting of a sitting room, office, a room occupied by a clerk working on the stamp collection and four bedrooms. Green's room was a combined bedroom and office containing a desk. Marshall, his secretary, had his office there. The apartment was comfortably furnished; rented on a yearly basis and after the first year, at a daily rate. Meals were furnished by the Hotel and billed weekly. While living there, Green worked on his stamp collection until late at night and took a great interest in radio. Their friend, Mrs. Mary Stafford, became one of the family circle in May, 1918, and made her home with them from 1918 to 1927. Miss Ruth Lawrence, one of his protegées, spent a portion of her school vacations there and he was there visited by friends from Texas and elsewhere and by business associates, but did no entertaining. They remained tenants of the Waldorf until it was demolished, when they moved to the Sherry-Netherland Hotel, one of the best Apartment Hotels in New York City, where they occupied the twenty-fourth floor in the tower. Their suite there consisted of a dining room, which was used as an office for his

secretary, a large living room, entrance hall, bedrooms, servants' rooms and elevator. The living room overlooked Central Park and opened upon a terrace which was used by Green for sunning. At first he had a lease running for two years from May 1st, 1929, at a rental of $27,000 per annum, which was not renewed, and thereafter the rental was continued on a monthly basis, at the rate of $27,000, until January 1st, 1933, when a reduction was made. It was a non-housekeeping apartment and the rental included regular guest service from the Hotel. Some of the furniture which they had used at the Waldorf was purchased by the Sherry-Netherland for use in this apartment. The apartment contained large safes for his stamps and coins, some chairs and lamps and a few framed pictures and other personal accessories. In general, the furniture and furnishings from the Waldorf suite were brought to the Sherry-Netherland. Several of the former employees at the Waldorf came to the Sherry-Netherland and Green said he wanted to preserve the atmosphere of the old Waldorf. They had no dining room and Green ate at his desk or on a card table. He then had two nurses and a maid and Mrs. Green had a maid; also an unlisted private telephone. He was there visited by many of his friends from Texas and elsewhere and business associates and sometimes entertained them at meals.

His furniture, pictures and furnishings remained in the house, 5 West Ninetieth Street, until 1921, when most of them were moved to Round Hills, Massachusetts. In 1928, the remainder was sent there and the house demolished.

Between 1918 and 1932, he had a number of automobiles for himself and his wife which were registered in New York City and when not in use kept on storage.

In the last three years of his life Green avoided New York because of efforts to serve him in certain litigation against the Directors of the Chase Bank.

During the last ten years of his life, this apartment in New York was used as a temporary sojourning place on his trips North and South and at the time of his death, contained over 100 of his mother's letters, a portion of his stamp collection, his interest in which had been slight since 1927, some clothing of Mrs. Green and a few personal belongings worth less than $1,000.

The tangible personal property owned by Green in New York State at the time of his death was as follows:

Jewels	$482,545.25
Coins	1,338.57
Cash	3,040.00
Stamps	1,095,316.00
Miscellaneous personalty	982.00
Total	$1,583,221.82

(D. 75, 76.)

Voting and Taxation There

Green never registered or tried to vote in New York. In 1916, his name was put upon the Assessment Rolls of New York City and his property appraised at $10,000,000, but upon application of his attorneys and affidavits by Green that he was not and never had been a resident of New York and that his legal residence was in Texas, this assessment was cancelled and no further attempt made to collect a tax on his intangible personal property. After 1919, when New York substituted an income tax for this intangible property tax with a graduated rate applying to the entire net income of a resident, Green never made any income tax return or paid any such tax in New York. (D. 126, 127.)

In 1917, while cruising in New York waters, when Mrs. Green and Mrs. Stafford suggested that he build a home on Long Island he said that he did not want to, as he did not want to pay taxes in New York; later he told them he wanted to build on his mother's place at Round Hills (D. 207).

There is nothing in the correspondence between Green and his attorney, Charles W. Pierson, of New York City, indicating that he ever regarded himself as a resident of New York. When he was advised by his said attorney that he had been assessed $5,000 for personal property in New York City for 1933, and Mrs. Green assessed a like amount, as non-residents, he replied that all he had in New York City was a stamp collection and safes, to him worth more than $5,000; all Mrs. Green had was a radio set and perhaps some cast off clothing (Mass. Ex. No. 330; D. 228).

Massachusetts and Florida, 1921 to 1936

Round Hills Estate, South Dartmouth, Massachusetts

The third and closing period of Green's life—the fifteen years preceding his death—shows not only a lessening of business activity, a desire to escape from the uncongenial environment of New York, and withdrawal from his former associations with Texas, but that his principal concern was his health and he was constantly seeking relief from the ravages of disease by "following the sun" and indulging in hobbies and outdoor activities where the climate permitted.

After his mother's death in 1916 and his marriage in 1917, he was free to establish a permanent home in any locality that he considered suitable, because he then had no attachment to the soil anywhere and was free from restraint. In the month following his marriage, he and Mrs. Green sailed to Buzzards Bay and anchored off Round Hills Farm, a property which Green and his sister had inherited from their mother. As a boy he had spent two Summers there with his mother and sister. It was a seacoast property of approximately 130 acres, located at South Dartmouth, Massachusetts, about eight miles from New Bedford, which had been in the ownership of his Howland ancestors for over 200 years—from the time of the original Indian grants—and was regarded by Green as an ancestral estate. The only structures then on the property were the old Howland homestead and some outbuildings. On this first visit in August, 1917, he determined to develop the property into a great country estate and build there a monumental home. On several other visits that Fall he ordered the clearing of the land, construction of breakwaters, wharfs, water tanks, pumping plant, greenhouses, gardeners' cottages, surveys to be made of adjoining property and had conferences with architects and interior decorators. From 1918 to 1921, the development of this property was his principal occupation and in June, 1919, the foundation of the house was started by Mrs. Green turning the first spadeful of earth. He lived on his yacht "United States" until she sank in August, 1919, and later at the Inn at Fairhaven, and in 1920 on the house boat "Day Dream", watching the progress of the work. In July, 1921, the house was ready for occupancy and Green and his wife moved in.

Green stated that his sister was willing to have him do what he pleased with the property and as they were childless, if he survived he would have the entire ownership and if she survived she would own it as residuary devisee under his Will executed in 1908. Mrs. Green had relinquished her rights by an antenuptial agreement, under which she received a guaranteed income of $18,000 a year. As Green and his sister were the last of their line, Green had a plan, which was never matured, to have the house become a memorial of some kind to the Green and Howland families. The house was designed and constructed so that it might be converted into an institution but was designated on the plans, equipped and furnished as a spacious residence, with every household convenience, and was used as such from the time he moved into it until his death.

The Round Hills property which passed under Mrs. Hetty Green's Will was a triangular tract with sandy shores jutting into Buzzards Bay. It was mostly wooded and uncultivated farm land on which was the old Howland homestead, some outbuildings and a small family graveyard containing two members of the Howland family. Between 1918 and 1920, Green purchased about 140 additional acres and later purchased two more parcels. In 1925, he conveyed about four acres to Whaling Enshrined, Inc., a corporation which he organized, but with this exception retained the whole estate of about 270 acres up to the time of his death. The estate comprised a bathing beach, a piece of woodland, some farm land, an extensive lawn with shrubbery, etc. He also acquired some wharf property about a mile distant at Padanaram as a headquarters for his boats and built a machine shop, floating dock, etc. Between 1917 and 1921, in addition to the house, Green constructed half a dozen cottages and had a "hotel" for employees, numerous farm buildings, garages, greenhouses, bath houses, pier and water tank and built jetties and retaining walls to prevent erosion and planted thousands of roses. Later, when he extended his activities, he built swimming pools, tennis courts, radio broadcasting stations with towers, airport and hangar, an airship dock, brought an old windmill from Rhode Island and embedded in cement a complete whaling ship, the "Charles W. Morgan" which had been sailed by his whaling ancestors, and began to accumulate whaling antiquities. At the time of his death, there were about 60 buildings on the property.

The house was a three-story rectangular structure of granite, with tile roof and Doric portico, with four columns surmounted by a heavy pediment, facing the waters of Buzzards Bay. Along the waterfront was a wide tiled terrace extending around the south wing and terminating in an open loggia overlooking the south beach, the front of which was of glazed tile to permit dancing. Under the portico, the main entrance led into a central hall containing a double mahogany staircase and an electric elevator running from the basement to the third floor. To the right of the entrance were Green's study, the library and a hall leading to the living room which occupied the entire south wing and was about sixty by thirty feet. To the left of the entrance, was the estate office and beyond the dining room, approximately forty by thirty feet—beyond this was the breakfast porch, a butler's pantry, the main kitchen and service quarters. On the second floor, Green and his wife had bedrooms, each measuring approximately thirty by twenty feet, with baths and dressing rooms, occupying the entire south wing. Opening off the hallway were a number of guest rooms, each having its own fireplace and bath. On this floor there was also a tea room, fitted with furnishings from the "United States" and the apartment of Green's secretary. The service quarters occupied the third floor. The basement contained an automatic oil heating system installed in 1935, valet's pressing room and a specially constructed vault for the storage of valuables.

The house was not only institutional in appearance but massively built, with walls sixteen inches thick of granite and masonry, interior columns and supporting beams of reinforced concrete and partitions of brick or terra cotta. The roof beams were supported by steel frames resting on the masonry walls and there were an unusual number of outlets for electric lights, etc. The furnishings were elaborate and most of the furniture specially built. Some of the pictures, clocks, etc., had been moved from 5 West Ninetieth Street, New York, and had formerly been in his Dallas homes. A portion of the first floor had mahogany wainscoting and many of the rooms were provided with revolving fans such as Green had seen in Texas, so arranged that they could be used to circulate the heat from the radiators in cold weather.

At this house, Green assembled all of his family possessions and heirlooms, two oil portraits of his mother and

another of his grandfather, Edward Mott Robinson, fine prints and engravings of whaling ships and scenes, photographs of the "Charles W. Morgan," framed certificates of his membership in various historical societies, photographs of the New Bedford house in which his mother was born and of the Captains of the New Bedford "Stone Fleet," and of Green as a Colonel on Governor Colquitt's Staff and mementoes of other incidents in his career.

The library contained a well chosen collection of miscellaneous and scientific books and of many rare volumes on the early history of New England and of the Elizabeth Islands, opposite South Dartmouth, log books and other mementos connected with the whaling industry, and a machine used for stamping medallions with the names of visitors to the "Morgan". In his bedroom were pictures of his mother and of the old Howland homestead, and scientific instruments and paraphernalia connected with the stamp and coin collections. In the vault in the basement, was kept his liquor and the bulk of his collections of jewelry, numismatics and stamps, which he took with him on trips to Florida and Texas and shipped back to Round Hills.

At one time he had a number of small boats, called his "Navy" or "Mosquito Fleet," but sold most of them after the sinking of the "United States" in 1918. The grounds were filled with mementos of the sea. The driveways were bordered with hundreds of yards of anchor chain from the Charlestown Navy Yard and upon the lawn was planted a part of the hull and mast of the whaling ship "Wanderer" which had been wrecked upon the Island of Cuttyhunk nearby.

The household at Round Hills included Mrs. Green, Marshall, his secretary, his bookkeeper and the clerk in charge of his numismatic collection, Mrs. Green's personal maid, Green's nurses and a staff of about 30 servants. Outside of the household servants, he had employed about the place over 50 farmers, mechanics and other employees. Mrs. Stafford, who had made her home with them in New York, lived at Round Hills each year from 1920 to 1927 and several of his protegées spent their Summer vacations there. Most of the outside employees remained there all the year round but after the Winter of 1921-22, a skeleton staff of seven or eight servants was left in the house in the Winter and the remainder went back and forth between Round Hills and

Florida. The house was kept heated throughout the Winter, but the furnishings were covered and protected.

Most of his automobiles with Massachusetts registrations were kept there and when they began moving to Florida, the cars for Colonel and Mrs. Green were taken back and forth and many of them were provided with Florida license plates.

Activities, Interests and Associations at Round Hills

Because of the arthritic condition which developed in 1921, Green used a small electric hand operated car by which he propelled himself around the grounds and later bought a small closed electric car with heating equipment which could be used in cold weather. This car was fitted with appliances for his collections, books and papers and enabled him to be outdoors in all kinds of weather, to give attention to the various activities there.

At Round Hills, Green did not go into society and was indifferent to the Summer residents of Nonquitt and Salters Point, especially after they objected to his radio and aviation field. His guests were limited to some old residents of New Bedford, visitors from Texas and his wards. He enjoyed hobnobbing with farm employees and the local tradesmen of New Bedford and the men engaged in scientific research. He was very popular with the people of the vicinity and kept his grounds open to the public who came by thousands to bathe on his beach and see the whaling ship "Morgan." He made his grounds and boats available for the use of crippled children and supplied all year round bus transportation for girls attending public schools. His daily routine was to have breakfast in his room or with his wards, motor around the estate inspecting the improvements, go shopping in New Bedford, have lunch and dinner with the family and afterwards spend the evening showing moving pictures, playing the slot machines and working until late at night over his stamp and numismatic collections. During the first year he was at South Dartmouth and vicinity he made weekly trips to New York until they were discontinued after 1922. He gave some attention to farming and horticulture as in Texas, had a dairy, raised goats, poultry, etc., and employed about 40 farm hands, half of whom stayed all the year round. His farm supplied the house with vegetables and his greenhouse furnished flowers, but were not profitable.

He maintained an unusual photographic laboratory and made moving pictures of his activities there. In 1922, he became interested in radio, constructed two broadcasting stations and enlarged them in 1925 so that programs could be sent from his station WMAF, called "The Voice From Way Down East," throughout New England and even to Europe, issued a pamphlet describing this station in which he spoke of himself as a descendant of the John Howland to whom the Round Hills tract had been allotted. At his invitation, thousands of people came to hear his concerts and other broadcasts. At the end of 1927, when broadcasting became commonplace, he lost his interest in this phase of radio and devoted his attention to it as a means of communication, etc.

In 1927, his interest became centered in aviation and the use of radio in connection with navigation by air and sea. He placed a number of his buildings and his radio facilities at the disposal of the Massachusetts Institute of Technology, for experimental purposes, in connection with radio communication between the ground and air, direction finding, transmission of radio beams for the guidance of aviators, and in connection with this project he began the same year the construction of a fully equipped airport, with facilities for landing hydroplanes as well as airplanes, obtained licenses to dredge and fill in sections of the waterfront, and constructed a hangar and runway for airplanes. In connection with the Massachusetts Institute of Technology, he arranged with the Goodyear Tire & Rubber Company to supply a blimp for research work and built a blimp dock. This airport was rated A-1 by the United States Government and no landing charge was made. He employed a superintendent and established a school for aviators. In 1929, purchased a flying boat for his wife called the "Miami Maid" which he kept at Round Hills. He studied the subject and could discuss aeronautics intelligently with mechanics upon his daily visits to the airport which was maintained in good condition until his death.

The Round Hills Research Division of the Massachusetts Institute of Technology started in 1925 and continued until his death. It began with a study of radio as aid to navigation and studies were made of the penetration and dissipation of fog as an aid to air navigation. In 1931, experiments were began with high voltage generators for the "smashing" of atoms, etc. Green took a personal interest in these experiments and it was his custom to make daily visits to the work

shop and laboratory. In the relief work during the Vermont flood in November, 1927, and in connection with the sinking of the "Vestris" November, 1928, and signalling to the Graf Zeppelin on her maiden voyage, as well as during the Byrd Antarctic Expedition of 1926-7, this station demonstrated its practical usefulness. Some part of this experimental work was carried on in collaboration with the United States Government. These various facilities cost Green upwards of $1,250,000 between 1925 and 1933, in addition to the money gifts made to the Institute of Technology. Pecuniary donations were discontinued after 1933 but he continued to supply the facilities.

Early in his development of Round Hills, Green began to assemble books, antiquities, etc., connected with the whaling industry in which his forebears had prominently engaged. In 1924 he tried to purchase the "Charles W. Morgan", an old whaling ship which had belonged to his ancestors at one time and finally arranged to have it transferred to Whaling Enshrined, Inc., to which corporation he transferred a part of his shoreland for a concrete berth and dock. Until his death he donated $10,000 to the maintenance of the ship and her crew of a Captain and nine sailors. He collected flags which had been used as signals by the New Bedford Fleet and on anniversaries had them displayed. This ship was kept open to the public without charge and about 125,000 people visited it yearly. In connection with the "Morgan", it was originally his intention to construct a whaling village and museum but this project, while started, was never completed.

Many volumes in his library relating to whaling and maritime industry and Gosnold's Voyage to New England in 1602 were of great rarity. Green had expert advice and gave much personal attention to the collection of these books and to histories relating to the genealogy of the Howlands and the early history of New England, New Bedford and South Dartmouth. In his application for membership in the Massachusetts Society of the Sons of the Revolution and the Society of Colonial Wars, he claimed lineal descent from Massachusetts and Rhode Island ancestors. He also had a tablet in memory of his mother placed in the room of the Massachusetts Historical Genealogical Society.

All of these activities ceased in the last three years of his life but he continued to spend substantially all of his Summers at Round Hills until his death and all of his personal

and intimate belongings remained there. He told Neyland that he hoped to be there when he died (D. 314). His remains were brought there from Lake Placid for the funeral service and Mrs. Green continued to occupy Round Hills for six months after his death.

The cost of the Round Hills house and its furnishings was approximately $785,323.42; of the Round Hills farm $616,127.44 (Mass. Ex. No. 411; D. 267-8). Between 1917 and 1936, Green expended on the Round Hills estate on both capital account and maintenance $6,688,639.55 (D. 268). His assets in Massachusetts at the time of his death were:

Real estate at Round Hills (one-half interest in same)	$103,000.00
Real estate at Padanaram	25,000.00
Jewelry	864,119.00
Coins, medals and tokens (face value $126,409.13)	376,799.64
Paper money (face value $608,013.42)	626,496.18
Gold certificates	33,370.00
Paper money	198,256.00
Stamps	203,132.00
Tangible personalty at Round Hills	63,823.60
Tangible personalty at Padanaram	4,711.00
Total	$2,498,707.42

(D. 75, 76, 77-79.)

Voting and Taxation in Massachusetts

He never attempted to vote in Massachusetts, declined to register there or to run for Congress, and never openly acknowledged Round Hills as his legal residence, invariably giving as his reason that he wished to avoid paying taxes there. In 1915, he had his yacht "United States" taken out of the State to avoid taxes. For the same reason he carefully refrained from going into the State until after July 1st and always arranged to leave before the expiration of six months. When notified by the Massachusetts Commissioner of Corporations and Taxation in 1928 of his liability to income taxes as a resident of Massachusetts, Green said that he had his legal residence at Terrell, Texas, and was not at that time prepared to file or pay income taxes to Massachusetts as a resident. At no time did he file an in-

come tax return or pay any income taxes to Massachusetts and after this interview, no demand was made upon him until the formal notice which was received shortly after his death. (D. 88-89, 215-231, 338-340.)

Physical Condition After 1921

Although Green recovered from the acute illness of 1921 and his general health and the condition of his organs remained good, a gradual physical deterioration set in which resulted in extreme anemia requiring many blood transfusions, and removal of his teeth and a severe arthritic condition which was aggravated by the fog and dampness at Round Hills. He was frequently advised by his physicians that he should not remain there so late in the year but always insisted on staying into December except on four occasions in the last fourteen years of his life. During this period he never used alcohol but was addicted to the excessive use of bromo-seltzer which greatly weakened him. In September, 1932, a cardiac condition required him to seek a higher altitude and he went to Lake Placid, New York. From then on his decline was progressive. He was unable to go about alone and was driven by chauffeurs. He continued his shopping trips to New Bedford and spent much time outdoors on his estate accompanied by some of his protegées. He was confined to the house more frequently and his activities were greatly curtailed or discontinued, although his interest survived.

46 Star Island, Miami Beach, Florida

In 1923, Green was advised by his physician, Dr. Pascal, to go to Florida following an operation and blood transfusion in New York. He stopped in hotels in Miami and Jacksonville, purchased the house boat "Pioneer," upon which he cruised; ordered a house boat to be constructed early in January, 1924; returned to Jacksonville and spent nearly two months at hotels or on the "Pioneer." When the boat which he called the "Colonel" was finally delivered, both boats were taken to Miami. In April, 1924, Green purchased a lot on Star Island, Miami Beach, at a cost of $32,000 and ordered some landscaping and the construction of a dock. In January, 1925, he returned to Miami Beach and lived on the "Colonel" at the Star Island dock for about three and one-half months. While there, Green purchased

two adjacent lots for $120,000, one of which contained a Yacht Club which he remodeled into a dwelling for the following season. When he arrived in January, 1926, he had most of this work done over. That year he spent February, March and April on his house boat "Colonel" at the Star Island dock. The house was finally completed and they occupied it for the first time in 1927, remaining for nearly three months, then going to Marlin, Texas, in April. During the succeeding years until his death, Green's average stay in Florida was about four and one-half months, between January and May.

Star Island House

Star Island is an artificial island built by the Miami Ocean View Company by pumping earth from the bottom of Biscayne Bay opposite and within the city limits of Miami, and connected by a bridge near one of the principal Causeways leading to that City. It is elliptical in shape, with a circular driveway in the center leading into the principal estates and contains 46 lots. Green's estate comprised three of these lots containing approximately three acres. The entire area is restricted to residential and the houses are substantial and beautiful.

Green's residence embraces two houses of a low Spanish type, built of reinforced hollow tile and stucco. The main building faces the water and was separated from it by lawn about twenty yards wide covered with palms and exotic shrubbery. From the loggia in the center portion of the building there was a runway to the main dock, which was decorated with stripped poles in imitation of Venetian gondolas. On the inland side were the service quarters, driveway and formal gardens filled with royal and cocoanut palms, etc.

When the work of construction was completed, nothing remained of the Yacht Club but the central living room, which was two stories in height with a bronze staircase leading to the second floor at one end and a fireplace with a balcony or mezzanine above. The ceiling of this room was ornate and beautiful. On both the waterfront and driveway sides were loggias. West of the living room were the dining room, service quarters and double garages. On the east side was a large reception room used for displaying moving pictures, and patio and loggia, a sun room called the "Palm Room" and entrance hall in which was an electric elevator

to the second floor, where the Greens had their bedrooms, sitting rooms and baths. An enclosed passageway and corridor led to the guest suites, three of which were on the inland side and the other faced the waterfront. Each master bedroom had its own bath or shower and some of the suites contained sitting rooms. The windows and doors were placed to admit light and air. The servants' wing was unusually complete and accommodated about 25 servants. All of the main rooms contained numerous electric outlets. Green had his monogram, composed of two Gs interwoven, worked in the tile at the main entrance and in the front of both entrances; also his initial G on the panels of the elevator shaft. The house was constructed of the best materials and designed for comfort and beauty. There was nothing about it to suggest anything but an unusually fine private residence. It was furnished elaborately with specially built furniture manufactured by the Company that had made the Round Hills furniture and by decorators in New York City. The decorations were somewhat similar in style to Round Hills but lighter in color. The rugs were more beautiful and expensive than those at Round Hills and the general effect was more homelike. Adjacent to the room used for moving pictures, was a projector room and a room containing a large number of films, some of which were commercial but many made especially for Green showing scenes at Star Island and Round Hills. Green's bedroom contained some furniture specially designed for his use and much paraphernalia used in connection with his stamp and numismatic collections. The house contained no library, no framed pictures or mementos of his ancestors, or articles of a sentimental nature or personal associations as at Round Hills.

Green sold the "Pioneer" in August, 1925, and after the completion of his house, had the "Colonel" remodeled to look like a Mississippi River show boat and kept it moored at his dock for use as a dance pavilion at Mrs. Green's parties. This boat was sold in 1934. He also had three other boats in Florida—a tug boat called the "Friday", a speed boat, "Mabel G." and the "Isola Stella" (Italian for Star Island). Green himself never used any of these boats after 1929 and in the last few years they were kept tied up at the dock or in storage.

Green also had several automobiles for himself and Mrs. Green containing Florida or Massachusetts license plates,

which were brought from Round Hills to Star Island and sent back at the end of the season.

The grounds at Star Island were planted and cared for by the Exotic Gardens, Inc., which performed similar service for neighboring estates. Green took an interest in his grounds and flowers and it was regarded as one of the handsomest places in Miami.

Most of the remodeling of the building was done in his absence and when there he did not display the same interest in the construction as at Round Hills and seemed to rely more upon his architects, decorators and contractors.

The capital cost of the Star Island residence was $632,110.98 and the total expense account $842,324.66 (D 151-153). At the time of his death, his assets in the State of Florida aggregated $268,418.97, as follows:

Fractional currency	$4,039.70
Four boats	10,500.00
Furniture, etc.	45,237.00
Real estate	102,500.00
Property subject to agreement for deed	60,000.00
Mortgages	46,142.17
Total	$268,418.97

(Tex. Ex. 327; R. 2586-7; D. 75-76, 79.)

Household Establishment and Social Activities in Florida

When the Greens were at Star Island, the household included Mrs. Green, Marshall, his secretary, and a staff of over 25 servants, some of whom were brought from Round Hills for the season and sent back. When not in use, the house was left in charge of a Miami couple as caretakers and the Chief of Police notified. Mrs. Stafford lived with the Greens for several seasons on their house boat and they had few other house guests except old friends from Texas.

Green himself did not go into society or entertain but Mrs. Green did considerable entertaining, giving on one occasion a housewarming party for 300 guests, when the illumination of the gardens and floral display were elaborate. Although a member of various Miami Clubs, Green did not go there. He was very popular with townspeople and tradespeople but aside from a few acquaintances in the City of Miami who were prominent in local affairs, he had

no close friends there. He never conducted in Florida any of the activities or experiments which occupied him in Texas and Massachusetts, and although facetiously calling himself a "cracker," he did not appear to be particularly interested in the history of Florida or in the accumulation of books or mementos relating to its early history.

Aside from his financial interest in the Fogal Dry Dock and Storage Company, where he kept his boats, and a stock interest in some of the local banks, his life in Florida was typical of an invalid seeking health—cruising in the waters of Biscayne Bay and Indian River when physically able to go in his boats; taking daily drives in his automobile with a chauffeur; shopping expeditions in the adjacent Cities of Miami and Miami Beach; making purchases of diamonds and jewelry, and when confined indoors, working on his coins, currency and latest stamp collections, displaying moving pictures and making jigsaw puzzles (of both of which 46 Star Island contained hundreds of examples), occasionally receiving callers, participating in the water carnivals and stimulating outdoor motor racing by giving trophies. He contributed to one of the Churches but attended none and also made donations to various charitable objects and made moderate contributions to many local institutions. Everything he did indicated a seasonal vacation and relaxation from physical and mental effort. He realized that the "sun was on his back" and tried to make the most of it. He received great benefit from the climate and frequently said it was "God's Country" and enjoyed its advantages and beauties. He told Tucker, an old friend from Texas, "This is my home and I expect to live here the rest of my days," (D. 372) and told others that he would stay all the year round if there were not so many damn mosquitoes.

Voting and Taxation There

Green never registered or attempted to vote in the State of Florida. The system of tax prevailing there called for the payment of annual taxes on the value of real and personal property there situated and in the case of residents, upon all of the intangible personal property of such residents. Green paid no intangible property taxes and on March 31st, 1933, wrote to the Tax Assessor of Dade County that his legal residence was in another State, which statement was accepted by the Assessor and he was told he

would not be subject to tax on his intangibles except on bank stocks there assessable. No effort was made to assess him as a resident.

In 1931 and again in 1933, his friend, Walter Allen, of Terrell, Texas, advised him to change his legal residence from Texas to Florida because of certain pending tax legislation in Texas. After consulting his attorney, Charles W. Pierson, who advised him what legal steps were necessary to make a change of domicile and that as he had a residence in Florida it would only be necessary to make a formal announcement of his intention,—Green did nothing and as late as March 29th, 1935, he testified, under oath, in a judicial proceeding in Florida that Texas was his legal residence. (D. 98, 226-231.)

APPLICABLE PRINCIPLES OF LAW

The foregoing Findings of Fact indicate that the factors usually relied upon in the determination of domicile are here of little assistance.

Green was born in England; reared and educated in Vermont, Massachusetts and New York; in early manhood he adopted Texas as his domicile of choice and lived there for twenty years; married in Illinois and thereafter lived with his wife in domestic establishments in New York, Massachusetts and Florida; maintained a business office in New York for twenty-five years preceding his death; declared in his Will and legal documents and consistently maintained up to the time of his death that Texas was his legal residence; died in New York and was buried at Bellows Falls, Vermont, where his parents were interred, after services conducted at Round Hills, Massachusetts.

The four persons who were nearest to him in life—his wife, his sister, Mr. Potter, his office manager, and Mr. Marshall, his secretary—have been able to give but little aid in the solution of this problem.

Mrs. Green, an original party to this cause, filed an answer in which she asserted Texas to be the domicile of herself and husband. She was represented by counsel at the hearings in Texas and was a party to the probate proceedings in New York, opposing the domiciliary claims of that State. When this New York proceeding resulted in a settlement with Mrs. Wilks, Mrs. Green disappeared from this case and there is nothing in the record to indicate that she

resumed her former Texas domicile as she might have done at any time after her husband's death. On the contrary the evidence shows she remained at Round Hills for six months thereafter. We can only surmise that she may have been influenced in claiming Texas by the advantages which might accrue from the community property laws of that State and that she may have been deterred from returning there by the local criticism which the witness McDonald referred to or because she had found the social environment of Round Hills and Star Island more congenial.

Mrs. Wilks in her answer in this case as well as in the New York proceeding, (where she claimed under her brother's Will in which he declared Texas to be his legal residence) has denied that he was a resident of Texas and through her counsel in this proceeding asserts that his domicile at the time of death was in Massachusetts.

Neither Mrs. Green nor Mrs. Wilks has given any evidence to explain the inconsistency between Green's declarations and his actions or the conflict between themselves upon this issue of domicile.

Mr. Potter, his office manager and the representative of the Green Estate, whose testimony has been relied upon by all of the parties to the case, willingly produced the books, records and correspondence of Green and of his family holding companies, testified that from their first association in New York until his death Green claimed Texas as his legal residence and in his instructions to all at the office insisted that that State be given as his permanent residence in all legal papers. Walter Marshall, his secretary, testified to the same effect; but neither was able to give any intimation of the real intention behind Green's declarations and actions except what may be inferred from his evident desire and frequently announced purpose to escape and minimize taxes.

The desire to keep down taxes may be a perfectly proper reason for making a change of domicile (*McConnell vs. Kelley*, 138 Mass. 372).

Where, as here, declarations and conduct are in conflict, declarations alone do not afford any safe guide in determining the issue, especially where they have been inspired by selfish motives.

Re *Trowbridge*, 266 N. Y. 283;
Re *Newcomb*, 192 N. Y. 250.

These two cases bear many points of resemblance to the case at bar and deserve careful consideration.

When the essential requirements of actual residence and intention, as indicated by declarations, do not agree, it becomes necessary, in order to ascertain domicile, to make a minute inquiry into the habits, character, pursuits, social and domestic relations, business and political affairs and indeed the whole history of the person from his youth to his death,—the conclusion depending upon the weight of all of the evidence and the facts and circumstances in favor or against the conflicting places of residence.

Thayer v. *Boston*, 124 Mass. 132, and other cases,
19 Cor. Jur., Sec. 72, C. 1, p. 435.

Expressions of desire to retain a domicile in one State cannot prevail over the intention to make a new home in another State as manifested by actual removal thereto and manner of living.

Dorrance's Estate, 309 Pa. 151, 163 A. 303.

Conduct is of greater evidential value than mere declarations of intent.

Kennan Res. and Dom. 86;
Beale's Conflict of Laws, 253, 254;
Re *Trowbridge, supra.*

Declarations must, of course, be considered in connection with other facts as an index of intention, written being given greater weight than oral, but they have been termed the lowest species of evidence and are of no value when made for the purpose of creating evidence in favor of the declarant after he has become appreciative of the consequences resulting from a change of domicile.

19 Cor. Jur. Sec. 76, 5, p. 439-440;
Canadian Pacific Railway v. *Wenham*, 146 Fed. 207-8.

In explaining the statutes of Texas relating to the regulation of elections, counsel state in their memorandum (p. 27):

"We may add, appropriately, we think, that while Col. Green habitually exercised the privilege of voting in Texas, Article 2958 had application to him and restricted his right to his residence as defined, namely, to the place where he usually slept at night. When he took up his actual abode

in other States, and no longer had a place of residence in Texas, it is manifest that the standard of this statute not only had no further application to him, but it is obvious that it was incapable of application. Since he had no 'place where he usually slept at night' (in Texas) the test could no longer be applied. The old residence continued to control, just as when he lived in the State."

Counsel had previously pointed out in their citation from 15 Tex. Jur. 708-9, that under the law of Texas two things must concur to constitute domicile: First, residence and second, the intention of making the place of residence one's home.

The undisputed facts clearly show, as this admission of counsel indicates, that after 1911 Green *no longer had a place of residence in Texas.* The domicile of choice which he established in Texas in 1892 and maintained until 1911 was abandoned in fact and his domestic establishment and all of his personal belongings removed to New York. His intention to return to Texas might be presumed while temporarily residing in New York engaged in the conduct of his own and his mother's business, if he had done nothing inconsistent with the intention to return. After his mother's death in 1916, his marriage in 1917 and he had come into the full enjoyment of his fortune and was free from restraint, Green might have returned to Texas and reestablished himself in an actual permanent home there. Instead of doing so, he relinquished his nominal abode which he had obtained by renting a room in the house of Mrs. Jarvis in Terrell, which he never occupied, and in the visits he made to Texas in subsequent years to attend the meetings of his Railroad Directors, to vote, or for the purpose of taking medical treatment, he stopped at hotels or at the Buie Sanitarium at Marlin. After 1921, these visits ceased or were diminished and he visited Texas only for treatment at Marlin. The suggestion of his friends that he purchase a house at Marlin and take up his residence there met with no response from him. Instead of returning to Texas, almost immediately after his marriage he went to Round Hills, Massachusetts, where he and his sister owned what he regarded as an ancestral tract of land, purchased additional land and there proceeded to erect a palatial home which was completed and occupied by him in 1921.

During the interval between 1917 and 1921, he spent much of his time at South Dartmouth superintending the building operations.

Thus, we have the actual abandonment of the Texas domicile of choice and the actual acquisition of a new home in Massachusetts. Undoubtedly residence unless combined with intention cannot effect a change of domicile but where the declarations are self-serving or made with intention to deceive, they will be disregarded and the conduct of the party alone govern. After 1921, Green's declarations that he had a legal residence in Texas were made to the taxing officials of New York, Massachusetts and Florida for the purpose of escaping taxation in those jurisdictions. As a matter of fact, he had no actual abode or residence in Texas, and in law, had abandoned his former home there. He could not elect to make his home in one place for the general purposes of life and in another place for the purpose of taxation.

Feehan vs. *Tax Com.*, 237 Mass. 169, 171;
Re *Trowbridge, supra.*

As Mr. Justice Holmes said in *Dickinson* vs. *Brookline*, (181 Mass. 195, 196), "when you intend the facts to which the law attaches a consequence you must abide the consequence whether you intend it or not".

National City Bank vs. *Hotchkiss*, 231 U. S. 50, 56.

In *Gilbert* vs. *David*, 235 U. S. 561, 570, Mr. Justice Day said:

"Applying these definitions to the conduct of plaintiff, we have no doubt that the court was right in holding that he had acquired a new domicil in the state of Connecticut. He removed there with his family, and occupied a house to which he held the title. He owned other real estate in Connecticut, inherited from his uncle. He took a letter from his church in Michigan to a church in Danbury, Connecticut. For about ten years he was not back in Michigan, except for a short time, and then for a temporary purpose. The Michigan homestead and much of the furniture used there were sold upon the removal to Connecticut. For more than ten years he resided continuously with his family in the same house in Danbury, Connecticut. While the plaintiff did not vote in Connecticut, as far as the record shows, it is in evidence that he declared to another his intention of becoming a voter

there. To some witnesses he declared his purpose to reside in Connecticut. As against this testimony, it appears that he left his desk with his brother-in-law in Michigan, which he declared was for the purpose of 'holding his residence there.' To some witnesses he declared his intention to live in Michigan, and expressed his preference for that state as a dwelling place. He continued to pay membership dues to orders to which he belonged in Michigan.

It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut, should he succeed in disposing of it for what he considered it worth. But, as we have seen, a floating intention of that kind was not enough to prevent the new place, under the circumstances shown, from becoming his domicil. It was his place of abode, which he had no present intention of changing; that is the essence of domicil."

Green, although carefully advised by able counsel, did not have this legal conception of domicile. He was nomadic in his tastes and evidently regarded domicile as something distinct and apart from home or residence. *Home* to him was where he happened to be for the time being with his wife and domestic establishment. In the early days in Texas, it was his bachelor quarters in an old Opera House at Terrell, a converted building in the business district of Dallas or in his private railroad car. In New York, rooms, simply furnished, in an old house owned by his grandfather's estate or in an expensive hotel apartment at the Waldorf or Sherry-Netherland. Later, he made his home on the yacht "United States" or on one of his house boats in Massachusetts or Florida waters, and in the closing years of his life, in palatial homes which he seasonally occupied at Round Hills, Massachusetts, and Star Island, Florida. He told his attorney, Charles W. Pierson, in 1931 that he had no sentiment where his legal residence might be (D. 191). To him *domicile* was a mental state where he could obtain certain political advantages and freedom from taxation. He was not interested in making a home for posterity because he and his sister were the last of their line. He did have some unformulated notion of leaving a memorial to his mother, his sister and himself and the granite edifice at South Dartmouth on the land that had been in his family for generations, surrounded by mari-

time antiquities in which the Green fortune originated, with mementoes suggestive of his whaling ancestors, seemed to him to be the most appropriate memorial he could leave after death and the most permanent home he could enjoy while living.

There is no sufficient evidence to show that Green ever intended to make New York his permanent home. He rejected the suggestion when it was made to him by Mrs. Green and Mrs. Stafford in 1917 or 1918; he made no effort to become a voter in New York after he stopped voting in Texas; he owned no real estate there except what he acquired as a result of the foreclosure of mortgages and paid no personal or income taxes to New York. He had no close friends in that City and did not like the life or the people. After 1921, he was unable to go to theaters or baseball games as theretofore and was compelled to spend his time indoors and adopt hobbies which replaced his outdoor activities. He removed all of the furnishings of his former residence, 5 West Ninetieth Street and all of the early associations with his mother, except a few of her letters, to South Dartmouth. In a sworn statement to the taxing officials of New York, he declared that he was not and never had been a resident of New York. He never went to his office, 111 Broadway, after 1921 and carefully refrained from visiting the City during the last years of his life because of pending litigation. At the time of his death, his apartment in the Sherry-Netherland was under a temporary lease and for many years had been occupied by him for brief periods in the Spring and Fall while *en route* from Massachusetts and Florida.

This domicile actually established in Massachusetts in 1921, notwithstanding the mental reservation of his Texas residence, was not abandoned when he built his Star Island home. He went to Florida on the advice of his physician in 1924 and after living in hotels and on house boats, purchased three lots and built a beautiful home which he luxuriously furnished with everything necessary for his comfort. In Florida, he was able to be out daily in the sunshine and to avoid the chill of Northern Winters and obtained relief from the arthritic condition which was sapping his vitality. Doubtless those who have visited both Round Hills and Star Island would prefer to live at the latter place, where there is every convenience, almost perpetual sunshine and a homelike atmosphere. But under the authorities, the adoption of a changed location or a

subsidiary or secondary home for the sake of health does not constitute the abandonment of the old and the acquisition of a new domicile. His old friend, Walter Allen, of Terrell, Texas, who had been keeping him advised regarding the tax laws of Texas, and his personal counsel, Charles W. Pierson, in 1931 and again in 1933, advised him to formally adopt Florida as his legal residence (D. 192, 226, 229), but he made no attempt to do so; never voted there, never paid any intangible or income taxes in Florida and as late as 1935, in a judicial proceeding in Florida, testified that he was a resident of Terrell, Texas, and had a Summer home at Round Hills, where he spent several months of each year and divided the remainder of the year between New York, Texas and Florida. Doubtless he enjoyed life in Florida, liked the people, frequently said it was "God's Country" but did not attempt to make it his own. He was sent from Florida by his physician, Dr. Roche, to Lake Placid, New York, in his last illness. The Star Island home was closed when he left and the servants sent to Round Hills. His trunks and belongings were shipped there and after his death his remains were brought to Round Hills for the funeral services. To Round Hills was shipped the bulk of his collections of stamps, coins and jewels. Star Island was left in charge of a caretaker and was only visited by Mrs. Green to remove some of her personal possessions.

When a person who has capacity to acquire a domicile of choice has more than one home, his domicile is in the earlier home, unless he regards the second as the principal home.

Beale's Conflict of Laws, Sec. 24.3, p. 189;
In re *Barrow,* U. S. District Court (Mich.) 26 Fed. (2d) 106.

Beale, at page 190, says:

"The true criterion, therefore, for determining the domicil where there are two homes, seems to be the determination of the order of acquisition of the two homes. The one which having been first acquired became a domicil remains the domicil, in spite of the establishment of the new home; and the second home, therefore, cannot be a legal domicil so long as the first one remains an actual home.

* * * * * * *

"A common example of the existence of two actual homes is the case of a person who has at the same time a home

in the country which he occupies during a part of the year and a home in the city which he occupies during the remainder of the year. It has been often urged in such a case that the only home at any one time is the one of these two places which for the time the person is occupying; that he carries his *lares* and *penates* with him, and sets them up for the time being in the residence which he is then occupying."

If, as counsel for the defendants say, we must disregard Green's early history, except in so far as it furnishes a historical background, and determine what was his actual domicile at death by considering which of his three residences was the principal, predominant or permanent home, we arrive at the same end.

Round Hills was not only the earlier home but as the Findings of Fact show, it was the principal, predominant and permanent home when compared with the Star Island residence. A portion of the Round Hills Estate had been in Green's family for many generations; it was within a few miles of New Bedford, where his mother was born and raised; it contained almost all of his *lares et penates* and portraits of his ancestors; he had there assembled, at great expense, mementoes of his ancestors and of the whaling industry in which the Green fortune originated; it was there that most of his interests and activities were centered before illness restricted them; he had invested nearly $7,000,000 at Round Hills as compared with $1,500,000 at Star Island and over a period of years he usually spent five and one-half months there as compared with four and one-half months at Star Island.

Much evidence was given to show that it was designed and constructed to be converted into a museum or memorial of some kind; whereas Star Island was a beautiful private residence. But the monumental character of Round Hills does not detract from its serviceability as a residence and it was occupied as such from the time of its completion until Green's death. Mrs. Green looked forward to the time when she might be left alone and had selected a site and considered plans for a small cottage on the South Dartmouth estate which were never carried out. This massive edifice on the rocks at Newport would be regarded as simply another millionaire's palace but on the sandy shores of

Buzzards Bay it is not in keeping with the Summer cottages nearby. This may be evidence of Green's lack of taste but is no evidence of his intention not to regard it as a home. Throughout the country many large and palatial residences have been converted into institutions and Green may have had this idea in building the Round Hills mansion. The photographs attached to this Report fairly represent both residences. Both were homes but Round Hills was the earlier, predominant and principal home.

CONCLUSIONS

Upon a careful consideration of all of the evidence in the case and the memoranda submitted by counsel for the respective parties, I find that the domicile of Edward Howland Robinson Green at the time of his death June 8th, 1936, in fact and in law, was in the Commonwealth of Massachusetts.

RECOMMENDATION FOR A DECREE

In the light of these conclusions, I think the body of the decree may be substantially as follows:

Upon consideration of the pleadings and evidence in the above entitled cause, the Report of the Special Master and the findings submitted therewith, and after argument by counsel, it is this — day of ——, 1938, Adjudged, Ordered and Decreed that said findings be accepted and that at the time of his death June 8th, 1936, Edward Howland Robinson Green, in fact and in law, had his domicile within the Commonwealth of Massachusetts.

I think it would be appropriate to reserve jurisdiction of the cause for such further orders as may be necessary to carry the decree into effect and also make an equitable allocation of the taxable costs among the parties to the cause.

Respectfully submitted,

JOHN S. FLANNERY,
Special Master.

Hall at Col. Green's Residence Round Hills.

Living Room - Col. Green's

Library at Round Hills
Col. Greene Residence.